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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 596

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, APPELLANT,

vs.

THE OKLAHOMA TAX COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED DECEMBER 16, 1939.

SUPREME COURT OF THE UNITED STATES

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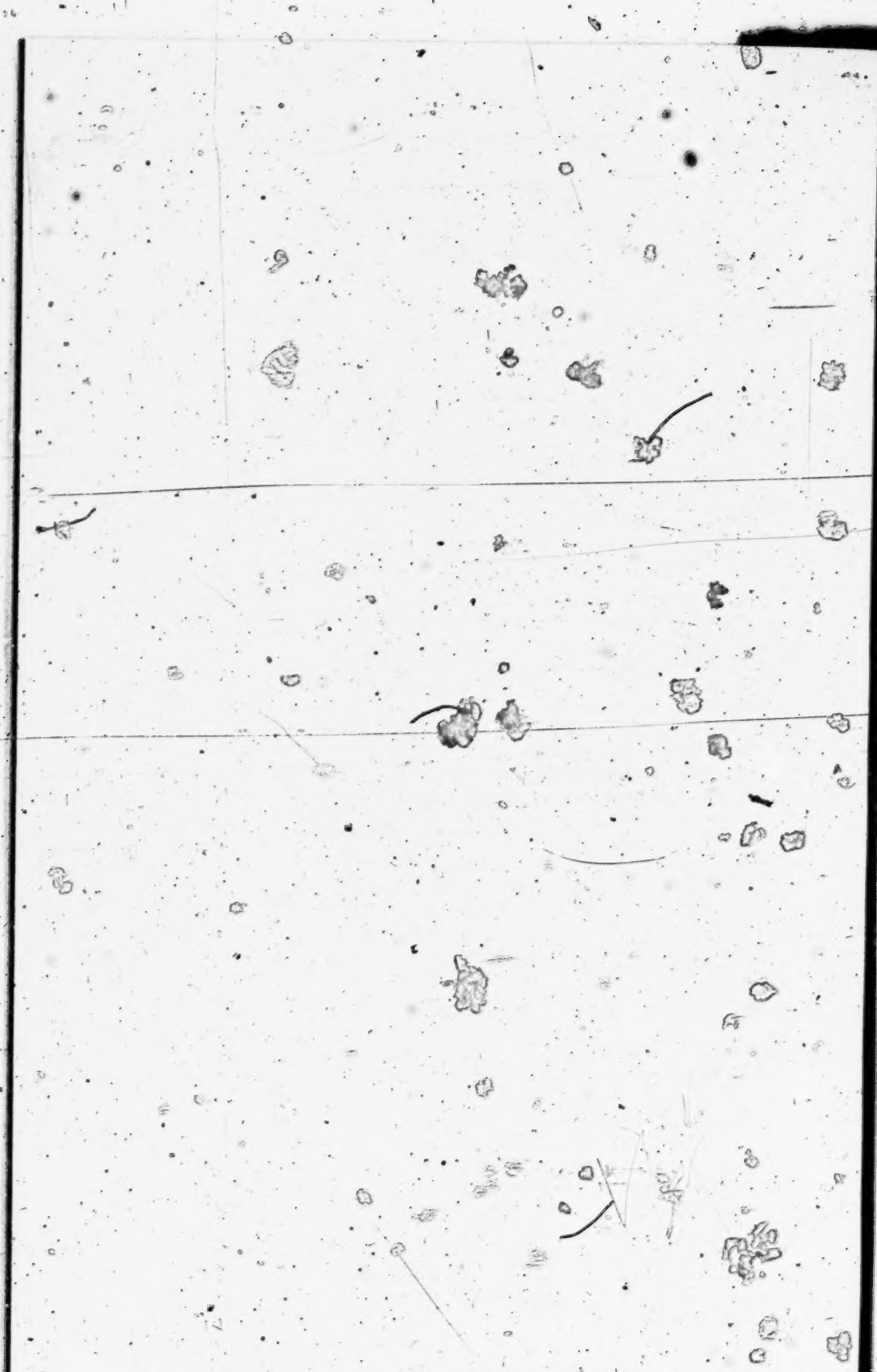

[fol. 1] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 29155

TRADESMENS NATIONAL BANK, OF OKLAHOMA CITY, a Banking Corporation, Plaintiff-in-Error,

vs.

THE OKLAHOMA TAX COMMISSION, Defendant-in-Error

PETITION IN ERROR—Filed March 27, 1939

The said Tradesmens National Bank, of Oklahoma City, a banking corporation, plaintiff-in-error, complains of said defendant-in-error in that the said The Oklahoma Tax Commission, at the ——— term of the District Court of Oklahoma County, State of Oklahoma, recovered a judgment by the consideration of said Court denying relief and recovery of the plaintiff-in-error in a certain action then pending in said Court wherein the said Tradesmens National Bank, of Oklahoma City, a banking corporation, was plaintiff and The Oklahoma Tax Commission was defendant. The original case-made, duly signed, attested and filed, is hereto attached, marked "Exhibit A" and made a part of this Petition in Error; and the said Tradesmens National Bank, of Oklahoma City, a banking corporation, avers that there is error in the said record and proceedings in this, to-wit:

1. Said Court erred in overruling the motion of the plaintiff for a new trial.

2. Said Court erred in not rendering judgment for the plaintiff-in-error.

3. Said Court erred in not holding the so-called income tax on income of plaintiff-in-error derived from Federal securities, Federal Reserve Bank stock, Federal Land Bank bonds, Joint Stock Land Bank bonds and Territory of Hawaii bonds, unconstitutional and as a violation of both the United States and Oklahoma Constitutions.

[fol. 2] (4.) Said Court erred in holding that said purported Oklahoma Income Tax Law is not a violation of the Oklahoma Constitution as regards its title.

(5.) Said Court erred in not holding said purported Income Tax Law in violation of both the Constitution of the United States and the Constitution of Oklahoma in that it is discriminatory and not a uniform taxation.

(6.) Said Court erred in not holding said purported Income Tax Law in violation of the Constitution of the United States and the Constitution of Oklahoma in that it is a taxation of Federal instrumentalities.

(7.) Said Court erred in not holding that said Act is unconstitutional under both the Constitution of the United States and Oklahoma as being discriminatory under Section 5219, United States Statutes.

Wherefore, plaintiff-in-error prays that said judgment so rendered may be reversed, set aside and held for naught; and that a judgment may be rendered in favor of the plaintiff-in-error and against defendant-in-error for the relief and judgment sought, and the plaintiff-in-error be restored to all rights that it has lost by the rendition of such judgment; and for such other relief as to the Court may seem just.

Tradesmens National Bank, of Oklahoma City, a Banking Corporation, by Spiers & Bodevitz, Its Attorneys.

[fol. 3] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 29,155

TRADESMENS NATIONAL BANK, OF OKLAHOMA CITY, a Banking Corporation, Plaintiff in Error,

v.

THE OKLAHOMA TAX COMMISSION, Defendant in Error

Syllabus

1. Article 6, Chapter 66, Session Laws 1935, is not violative of section 57, Article 5 of the Constitution insofar as said Act levies an annual tax on National banking associations "according to or measured by" the net income of such associations.

2. Section 16, Article 6, Chapter 66, p. 297, Session Laws 1935, 68 Okl. St. Ann. para. 887, providing for the taxation of national banking associations, which levies a tax "according to or measured by", the net income of such associations, constitutes a valid and binding exercise of the taxing power of the State notwithstanding further provisions of the Act, providing that such income shall include "the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income of which is tax free.

3. The state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unjust discrimination is inflicted upon them.

Appeal from the District Court of Oklahoma County

Hon. Lucius Babcock, Judge

Affirmed

Spiers & Bodovitz, of Oklahoma City, for Plaintiff in Error.

Rec. Dick Jones, A. L. Herr, C. D. Stinchecum, Rowe Cook, of Oklahoma City, for Defendant in Error.

[fol. 4] OPINION—Filed Oct. 17, 1939

OSBORN, J.:

This action was instituted in the District Court of Oklahoma County by the Tradesmen's National Bank, hereinafter referred to as plaintiff, against the Oklahoma Tax Commission, hereinafter referred to as defendant, wherein it was sought to recover certain taxes paid by plaintiff under protest. The cause was tried to the court, a judgment was entered in favor of defendant and plaintiff has appealed.

The tax involved herein was assessed against plaintiff under the provisions of sec. 16, art. 6, chap. 66, Session Laws 1935. The income against which the tax was levied consisted of dividends on stock owned by plaintiff in the Federal Reserve Bank and interest received by plaintiff on bonds or securities issued by the United States Government.

For reversal plaintiff submits the following propositions:

"1. House Bill No. 192, Article 6, Chapter 66, Session Laws of 1935, is unconstitutional as being violative of Article 5, Section 57, of the Oklahoma Constitution.

"2. The 1935 Oklahoma Income Tax Law is unconstitutional as being discriminatory under the Constitution of the State of Oklahoma.

"3. The 1935 Oklahoma Income Tax Law is unconstitutional as being violative of the Fourteenth Amendment to the United States Constitution.

"4. The 1935 Oklahoma Income Tax Law is unconstitutional as being a direct tax on the income from obligations ans securities of the United States.

"5. The 1935 Oklahoma Income Tax Law violates the letter and spirit of Section 5219 Revised Statutes of the United States."

Under plaintiff's first proposition it is argued that the Act levies an income tax against National Banking Associations which purpose and intent is not disclosed in its title. The applicable portion of the title is as follows:

[fol. 5] "• • • an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by Method Four (4) of Section 5219, U. S. Revised Statutes as Amended, relating to National Banking Associations, • • •"

The tax levied by the Act involved herein is not an income tax, but is a franchise tax measured by net income. The levy of such tax is specifically authorized by Section 5219, U. S. Revised Statutes, Title 12, Section 548 U. S. C. A. The language used in the title is amply sufficient to designate the levy of a tax of this character.

The other propositions relied upon for reversal were presented to this court in the case of First National Bank of El Reno v. Oklahoma Tax Commission, 90 P. (2d) 438, and were determined contrary to the contentions of plaintiff. It appears that all of the arguments presented by plaintiff were before the Court in that case. Therein it was held:

"Section 16, Article 6, Chapter 66, p. 297, Session Laws 1935, 68 Okl. St. Ann. para. 887, providing for the taxation

of national banking associations, which levies a tax 'according to or measured by', the net income of such associations, constitutes a valid and binding exercise of the taxing power of the State notwithstanding further provisions of the Act, providing that such income shall include 'the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income of which is tax free.

"The state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unjust discrimination is inflicted upon them."

It would serve no useful purpose to reiterate the discussion contained in that opinion.

The judgment is affirmed.

Welch, V. C. J., Riley Corn, Gibson, Hurst, Davison and Danner, JJ.: Concur.

Bayless, C. J.: Absent.

[fol. 6] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed October 27, 1939

Comes now the Tradesmens National Bank, Plaintiff in Error, and respectfully represents to the court that on the 17th day of October, 1939, a decree of judgment was rendered in this court in said cause affirming the judgment of the District Court of Oklahoma County.

That said decision overlooked two matters which, in our opinion, should be decisive of the case:

A. The court treats the tax levied under the 1935 Oklahoma Income Tax Law against national banks as a franchise tax measured by net income, and not an income tax. The opinion cites no authorities for this construction. That, of course, is an important question and the determination is rather summarily reached. There is no question but that said tax is unconstitutional and invalid by all methods of determination if it is in fact an income tax, and it is at least

arguable as to its constitutionality if in truth and in fact it is an excise or franchise tax.

We submit that it is not a franchise or excise tax for the following reasons:

(1.) No state may impose a franchise on a national bank granting or restricting the exercise of its banking privileges within the confines of the state.

(2.) The enactments in Oklahoma are all set forth in the regular and only income tax laws of the State of Oklahoma and do not purport to be set forth in any legislation regarding corporations.

[fol. 7] (3.) The Oklahoma Tax Commission, being the taxing agency for the State, in levying the deficiency expressly construed the Act by levying a tax in the form of a letter addressed to the plaintiff in error wherein they levied a deficiency against the bank for its "income tax".

"In Macallen Co. v. Massachusetts (1929) 279 U. S. 620, 73 L. Ed. 874, 65 A. L. R. 866, 49 S. Ct. 432 (reversing (1928) 264 Mass. 396, 163 N. E. 75, rehearing denied (1929) 280 U. S. 513, 74 L. ed. 585, 50 S. Ct. 14), a state statute imposing on domestic corporations "with respect to the carrying on or doing of business by it, an excise equal to" a certain per cent of the net income of such corporations derived from business carried on within the state, was held to be void as an unconstitutional burden upon United States bonds and other tax-exempt securities; since, notwithstanding the purport of the statute itself, the tax was in fact one upon the income, rather than upon the right to do business, where, under the statute as it formerly stood, the income from United States bonds and other tax exempt securities was expressly excepted from the tax, and the legislature subsequently amended the act so as to repeal the section exempting such securities in computing the amount of the tax, thus indicating an intention to subject such securities pro tanto to the burden of the tax. 71 A. L. R. 270.

(B.) There is another decisive feature that the court overlooked in its opinion.

The Stipulation of Facts set forth in the record expressly provided that the enactments of Congress under which these Federal instrumentalities were issued became a part of the record. Further, the record and Stipulation expressly listed

such Federal obligations and bonds of Federal instrumentality with the amount of income derived therefrom.

Believing that the court overlooked this feature, we quote from the face of Federal Farm Mortgage Corporation bonds, which is as follows:

We submit that the State of Oklahoma in its 1935 Income Tax Law is attempting by legislation to impair the obligations of this contract issued by the Federal Government and is seeking by indirection to violate the express conditions and terms of said obligation.

Wherefore plaintiff in error prays that a rehearing of said cause may be granted by your honorable court.

Spiers & Bodovitz.

[fol. 8] I, V. J. Bodovitz, hereby certify that I am attorney for Tradesmens National Bank of Oklahoma City, Plaintiff in Error in the above cause, and that a copy of this Petition for Rehearing has, on this 26th day of October, 1939, been mailed to Mr. Dick Jones, Chief Attorney for Defendant in Error, at his office in the State Capitol, Oklahoma City, Oklahoma.

V. J. Bodovitz.

[fol. 9] IN SUPREME COURT OF OKLAHOMA

29,155

TRADESMENS NATIONAL BANK OF OKLAHOMA

vs.

OKLAHOMA TAX COMMISSION

ORDER DENYING PETITION FOR REHEARING—Filed November 7, 1939

The clerk is hereby directed to enter the following orders:

* * * * * * *

Petition for Rehearing Denied

Wayne W. Bayless, Chief Justice.

[File endorsement omitted.]

[fol. 10] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION FOR STAY OF MANDATE TO PERMIT TAKING AND ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed November 10, 1939

Comes now the appellant and plaintiff in error and respectfully shows to the Court that it intends to take and have allowed, and to prosecute, an appeal to the Supreme Court of the United States and to have reviewed by that Court the action and decision of this Court in the above styled and numbered cause, evidenced by the written opinion of this Court filed in this case on the 11th day of October, 1939, and the order of this Court denying appellant's petition for re-hearing, which order was entered on the 7th day of November, 1939.

This appellant shows to the Court that on account of the many troublesome and vexing questions involved, and on account of the fact that appellant's assignment of errors to be urged in the Supreme Court of the United States and appellant's statement of the jurisdictional grounds for its [fol. 11] said appeal must be prepared and presented at the time the allowance of said appeal is sought, appellant will require at least twenty days from this date for such purposes.

Appellant further shows to the Court that under the rules of the Supreme Court of the United States, it is entitled to supersede and stay the action of this Court by the filing of a good and sufficient bond, as required by said rules, and that the amount of such bond, together with the amount of the proper security for costs must be fixed and determined by this Court, and that such bond must be filed, presented and approved by the Chief Justice of this Court at the time of the allowance of such appeal.

Appellant further shows to the Court that the money judgment prayed for in its petition is for income taxes paid by appellant to the Oklahoma Tax Commission, and that said fund is impounded by the Oklahoma Tax Commission and that indemnity is only necessary in an amount sufficient to secure costs of suit and interest.

Wherefore, premises considered, appellant prays for an order of this Court:

(1) Staying the mandate in this cause for a period of twenty days from this date, during which time appellant shall take and cause to be allowed in proper manner an appeal to the Supreme Court of the United States;

(2) Fixing and determining the costs and supersedeas bond which this appellant shall file, present and have ap-
[fol. 12] proved by the Chief Justice of this Court at the time said appeal is allowed, said bond to be conditioned as required by law and the rules of the Supreme Court of the United States.

Dated this 10th day of November, 1939.

E. A. Walker, V. J. Bodovitz, Attorneys for Appellant and Plaintiff in Error Tradesmens National Bank of Oklahoma City, a banking corporation.

Duly sworn to by Spence Miller. Jurat omitted in printing.

[File endorsement omitted.]

Service of the above and foregoing motion, and receipt of a copy thereof is hereby acknowledged this — day of November, 1939.

A. F. Herr, Attorney for Oklahoma Tax Commission.

[fol. 13] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE AND FIXING COSTS BOND—Filed November 10, 1939

Now, on this 10th day of November, 1939, the above named court having considered appellant's motion filed herein on the 10th day of November, 1939, and for good cause shown

It Is Hereby Ordered that appellant's application and motion for stay of mandate in this cause is sustained and said mandate herein is stayed, pending the application of appellant for an allowance of an appeal to the Supreme Court of the United States and pending the final determination of such appeal when taken, upon condition that appellant shall make due application to the Chief Justice of this court within twenty days from this date for the allowance
[fol. 14] of such appeal to the Supreme Court of the United

States and at such time shall present and have approved by the Chief Justice and filed with the Clerk of this court a good and sufficient costs bond, conditioned as required by the rules of the Supreme Court of the United States in such cases made and provided; said bond to be in the principal sum of Five Hundred ($500.00) Dollars, which bond shall within such time be presented and approved by said Chief Justice and filed with the Clerk of this Court.

Dated this 10th day of November, 1939.

Wayne W. Bayless, Chief Justice.

[File endorsement omitted.]

[fol. 15] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL AND PRAYER FOR REVERSAL—Filed Dec. 4, 1939

To the Honorable Chief Justice of the Supreme Court of Oklahoma:

Your petitioner, Tradesmens National Bank of Oklahoma City, a banking corporation, appellant in the above entitled cause, and appellant and plaintiff in error in the cause in the Supreme Court of Oklahoma, hereinafter referred to, considering itself aggrieved by the final decision and judgment of the Supreme Court of Oklahoma entered on the 7th day of November, 1939 (which judgment became final on that day upon the denial of appellant's Petition for Rehearing) in the cause entitled:

"Tradesmens National Bank of Oklahoma City, a banking corporation, Appellant and Plaintiff in Error

vs.

Oklahoma Tax Commission, Appellee and Defendant in Error

Cause No. 29,155"

on the docket of said court, affirming the judgment of the District Court of Oklahoma County, hereby files its petition for an appeal from said decision and judgment.

In the above entitled cause in the Supreme Court of Oklahoma there is drawn in question the validity of the statute of Oklahoma on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the [fol. 16] United States in that it deprives this appellant of its property without due process of law and denies to it the equal protection of the laws; further, being repugnant to Article I, Section 9 of the Constitution of the United States in that it is an attempt on the part of the State of Oklahoma to enact a law impairing the obligation of a contract; and that said Act is in derogation of the constitutional power of Congress to borrow money on the credit of the United States, as well as in violation of the acts of Congress declaring such bonds and securities to be non-taxable; said statute being the Income Tax Law of Oklahoma enacted by the Legislature of Oklahoma, Session Laws 1935, Section 16, Article 6, Chapter 66.

The decision and final judgment of the Supreme Court of Oklahoma herein appealed from were in favor of the validity of said Income Tax Law enacted by the Oklahoma Legislature in 1935.

The Supreme Court of Oklahoma is the highest court of the State of Oklahoma in which a decision in this suit could be had.

The petitioner shows that this case is one in which, under the legislation in force (Sec. 237, Judicial Code as Amended, 28 U. S. C. A. 344) as amended by the Act of January 31, 1928, (Ch. 14, 45 Stat. 54) a review could be had in this court as a matter of right by appeal.

This appeal is accompanied by an assignment of errors setting forth the grounds upon which it is contended that the decision and judgment of the Supreme Court of Oklahoma should be reversed, and a statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review said decision and judgment of the Supreme Court of Oklahoma.

Wherefore, your petitioner prays:

That an appeal may be allowed herein from the Supreme Court of Oklahoma to the Supreme Court of the United States in order that said decision and judgment of the Supreme Court of Oklahoma may be examined and reversed; that a transcript of the material parts of the record in this

cause, duly authenticated, may be ordered to be prepared and certified to the Supreme Court of the United States, [fol. 17] as provided by law; that an order may be made fixing the security to be required of petitioner; that the cost bond tendered herewith by petitioner may be approved; and that there be issued to appellee a citation directing said appellee to appear in the Supreme Court of the United States at Washington, D. C., within forty days from the date hereof and there to show cause, if any there be, why said decision and judgment should not be reversed and speedy justice be done to the appellant in that behalf.

E. A. Walker, Attorneys for Appellant. V. J. Bodovitz, of Counsel.

Service of the foregoing petition for appeal and receipt of copy thereof at Oklahoma City, Oklahoma, this 29 day of Nov., 1939, is hereby acknowledged.

C. D. Stinchecum, Attorney for Oklahoma Tax Commission.

[fol. 18] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 4, 1939

Appellant, Tradesmens National Bank of Oklahoma City, a banking corporation, doing business in the City of Oklahoma City, State of Oklahoma, for its assignment of errors herein, says that the Supreme Court of Oklahoma, in its decision and judgment in the cause entitled

Tradesmens National Bank of Oklahoma City, a banking corporation, appellant and plaintiff in error, vs. The Oklahoma Tax Commission, appellee and defendant in error, Cause No. 29,155,

erred in approving and affirming the judgment and order of the District Court of Oklahoma County in Case No. 93,837 then pending in the District Court of Oklahoma County, State of Oklahoma, wherein Tradesmens National Bank of Oklahoma City, a banking corporation, was plaintiff and The Oklahoma Tax Commission was defendant, and

which District Court rendered judgment against the plaintiff and in favor of the defendant, denying plaintiff recovery of income taxes paid under protest. Upon review of such judgment and order of the District Court, the Supreme Court of Oklahoma erred in each of the following particulars, and in each such particular appellant was deprived of its property without due process of law, and was also denied equal protection of law, contrary to and in violation of the Constitution of the United States.

I. The Supreme Court of Oklahoma erred in affirming the judgment of the District Court of Oklahoma County, State of Oklahoma, for the reason that the Oklahoma Income Tax [fol. 19] Law enacted in 1935, and Section 16, Article 6 thereof, is unconstitutional, and in violation of the Fourteenth Amendment to the United States Constitution.

II. That said court erred in affirming the judgment of the District Court of Oklahoma County for the reason that said 1935 Income Tax Law is violative of Article I, Section 9 of the Constitution of the United States as being an act of the State of Oklahoma impairing the obligation of a contract.

III. That said court erred in affirming the judgment of the District Court of Oklahoma County in upholding the validity of the 1935 Income Tax Law and Section 16, Article 6 thereof, for the reason that same is in violation of the constitutional power of Congress to borrow money on the credit of the United States, as well as a violation of the acts of Congress declaring such bonds and securities and the income therefrom to be non-taxable.

IV. That said court erred in affirming the judgment of the District Court of Oklahoma County and upholding the 1935 Income Tax Law of Oklahoma and Section 16, Article 6 thereof, for the reason that same is in violation of Section 5219, Revised Statutes of the United States.

For each of the errors specified above and because in each of said respects said decision and judgment of the Supreme Court of Oklahoma, in approving and affirming the judgment of the District Court of Oklahoma County, State of Oklahoma, deprives appellant of its property without due process of law, and denies to appellant the equal protection of the laws, appellant prays that said decision and judgment be reviewed by the Supreme Court of the United

States and there reversed and judgment rendered in favor of the appellant and for its costs.

E. A. Walker, Attorneys for Appellant. V. J. Bodovitz, of Counsel.

[fols. 20-32] Acknowledgment of Service

Service of the foregoing assignment of errors and receipt of a copy thereof at Oklahoma City, Oklahoma, is hereby acknowledged this 29th day of November, 1939.

C. D. Stinchecum, Attorney for Oklahoma Tax Commission.

[fol. 33] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed Dec. 4, 1939

The petition of Tradesmens National Bank of Oklahoma City, a banking corporation, for an appeal in the above cause (being cause No. 29,155, styled Tradesmens National Bank of Oklahoma City, a banking corporation, appellant and plaintiff in error, vs. The Oklahoma Tax Commission, appellee and defendant in error, upon the docket of the Supreme Court of the State of Oklahoma) to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, and the assignment of errors and the jurisdictional statement required by the rules of the Supreme Court of the United States being filed therewith, having been presented, and having been considered, together with the record of said cause,

It is Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Oklahoma, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Oklahoma shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States sc that same shall be delivered to said court last named within forty days from the date hereof.

And the said Tradesmens National Bank of Oklahoma City, a banking corporation, having presented to the Chief Justice of the Supreme Court of Oklahoma, in accordance with the prior order of this court, a good and sufficient cost

bond in the sum of Five Hundred ($500.00) Dollars as [fol. 34] security, with National Surety Corporation as surety, conditioned that appellant prosecute such appeal to effect, and if said appellant fail to make its plea good, it shall answer and pay all costs; and said bond having been taken and examined by me, is approved.

The appeal shall operate as a supersedeas, and the mandate of this court is hereby stayed and the effectiveness of the judgment and order appealed from is hereby stayed pending the final determination of said appeal.

Dated this 29th day of November, 1939.

(Signed) Wayne Bayless, Chief Justice of the Supreme Court of Oklahoma.

Attest: Andy Payne, Clerk. (Seal.)

Acknowledgment of Service

Service of the above and foregoing order allowing appeal and the receipt of a copy thereof is acknowledged by each of the undersigned this 29th day of Nov., 1939.

C. D. Stinchecum, Attorney for Oklahoma Tax Commission.

[fol. 35] Citation in usual form showing service on C. D. Stinchecum, filed Dec. 4, 1939; omitted in printing.

[fols. 36-40] Bond on appeal for $500.00 approved and filed Dec. 4, 1939; omitted in printing.

[fol. 41] In District Court of Oklahoma County

No. 93,837

The Tradesmens National Bank of Oklahoma City, a Banking Corporation, Plaintiff,

vs.

The Oklahoma Tax Commission, Defendant

Petition—Filed July 23, 1937

Comes now the plaintiff, a banking corporation, and for cause of action against the defendant, alleges and states:

1. That the plaintiff is a national banking corporation duly organized under and by virtue of the laws of the United

States and duly licensed and authorized to conduct its business in the State of Oklahoma as a banking corporation; that the defendant, Oklahoma Tax Commission, is the statutory body duly created by law and constituting the tax collecting agency of the State as to the taxes hereinafter mentioned.

2. That heretofore the 15th Legislature of the State of Oklahoma passed House Bill No. 192, commonly known as the Oklahoma Income Tax law of 1935", being Article 6, of Chapter 66, Session Laws of 1935, and that under such Act the plaintiff herein was taxed for the calendar year 1936; [fol. 42] that the said tax was illegal, erroneous, excessive and void to the extent and for the reasons hereinafter set forth; that the plaintiff paid said tax in the time and manner provided by law to the Oklahoma Tax Commission, and at such time and place gave notice to the said Oklahoma Tax Commission in writing of its intention to file suit for the recovery of the same, paying said tax under protest, and a copy of said notice and protest is attached hereto, marked plaintiff's Exhibit "A", and made a part hereof, such protest being filed and notice given on the — day of July, 1937.

3. Plaintiff further states that under the said legislative enactment an income tax was imposed upon said plaintiff of 6% of its net income and that said tax was imposed under and in accordance with said law, and in fixing and determining the amount of tax it is there provided that all corporation- shall be taxed upon their gross income, less certain allowable deductions and exemptions, and that as to every individual and every corporation in the State, other than banks, it is provided that the term "gross income" does not include the following: "Interest upon the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax free", but as to the plaintiff bank, by section 8, (8), (c), and by section 18, (b), it is provided that the term "gross income" as to the banks shall include "interest upon [fol. 43] the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free." That the plaintiff bank, and all other banks doing business in this State, therefore have been compelled to pay, and have paid a tax upon the income from tax exempt securities of the United States Government, whereas every other person and

corporation in the State is exempted from the imposition of the same burden, obligation and tax which is, as aforesaid, specifically imposed upon banks, and such tax as is occasioned by reason of taxing the income on exempt federal securities is illegal, erroneous, excessive and void as hereinafter more specifically set forth; that the amount of such illegal and discriminatory tax occasioned thereby is $6,622.65.

(a) That the said tax is illegal, erroneous, excessive and void in that it discriminates against the plaintiff bank, and taxes it in a greater amount than any other corporation or individual, banks alone being subjected to the tax on the interest and/or income from tax exempt federal securities. Plaintiff further states that the said provisions of the said Act, towit: section 8, (8), (c) and section 18 (b), which read as follows:

"In the cases of National banking associations, state banks, trust companies and other financial corporations, doing business in or organized under the laws of this state, the term 'gross income' includes the items of income enumerated in Section 18."

[fol. 44] "The term 'Gross income' shall also include the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free."

are unconstitutional and void and violate both the Constitution of the United States and the Constitution of the State of Oklahoma. That said discriminatory provisions violate Section 10 of Article I, and the 14th Amendment of the Constitution of the United States in that the said legislative enactment deprives the plaintiff bank of its property without due process of law, and of the equal protection of the laws, and the tax thereby imposed is not uniform. Further, that said portion of said Act is unconstitutional in that it violates Sections 2, 7 and 15 of Article II of the Constitution of Oklahoma in that it deprives the plaintiff of its property and rights without due process of law and denies plaintiff the equal protection of the law, and further, that it violates the legal contract existing between the Federal Government and the holders of Federal Government securities under which the income from said securities and said securities themselves are tax exempt, such provision being a part of

the statutes authorizing the issuance of said securities and of the securities themselves. Plaintiff further states that said portion of said enactment above quoted violates Sections 54, 57 and 59 of Article V of the Constitution of Okla- [fol. 45] homa in this: That the said enactment does not have a uniform operation throughout the State and is a special law as to banks, where only a general law as to corporations, particularly corporations similar to banks, would be constitutional; that the taxing of federal securities and the method of tax thereby imposed is not expressed in the title of the Act, and the title thereof is defective, containing no mention of any such tax as is imposed by reason of the above quoted provisions, and the title giving no notice of the imposition of a tax upon tax exempt federal securities and the income therefrom; further, that the statutes heretofore exempting the income from tax exempt federal securities, particularly Chapter 195, Session Laws 1933, is not legally repealed by the Act herein complained of in that reference to said Act alleged to be repealed is made to its title only and the repealed portion is not published at length, leaving said exempting 1933 Act in force; further, that a vested and accrued right exists in the plaintiff to have the income from said tax free federal securities exempt from any tax imposed by the State of Oklahoma, such right being vested by reason of the bonds and federal laws themselves, but being violated by the provisions above quoted. Plaintiff further states that the said portions of said enactment above [fol. 46] quoted violate Sections 5 and 14 of Article X of the Constitution of Oklahoma in that the tax thereby imposed is not uniform upon the same class of subjects, but discriminates as against banks, whereas there are numerous other subjects, such as building and loan companies, bond companies, mortgage companies, and individuals and corporations engaged in business similar to that of banks, and/or similar to one or more branches of business properly engaged in by banks; further, that the same is not a general law, but a special tax law singling out banks, where only a general law could be enacted. For the reasons heretofore stated plaintiff states that the said quoted portions of said enactment are unconstitutional and void and the plaintiff should be relieved from any burden imposed thereby.

(b) Plaintiff further states that the said quoted portions of the said Act as set forth in paragraph (a) above are

illegal and void in that they violate Section 5219, United States Revised Statutes as amended, relating to national banking associations; that under said federal statute the State has no power to impose any tax upon any national bank except in the manner permitted thereby; that under said Act of Congress no national bank can be taxed at a greater rate or in a different manner or greater amount than the tax imposed upon competing monied capital, and/or individuals or corporations engaged in competition with national banks. Plaintiff states that the said provisions above set forth, and particularly sections 8 and 18 of said Article 6, Chapter 66, Session Laws 1935, specifically impose a tax upon plaintiff bank upon the income from tax exempt federal securities and at the same time exempting [fol. 47] all other corporations and all individuals from that same, identical tax; that the plaintiff banks is therefore taxed differently from and in excess of the tax imposed upon individuals and corporations engaged in competition with the plaintiff; that there are in the same city with plaintiff bank and throughout the State of Oklahoma generally, numerous individuals and corporations, employing great amounts of capital directly in competition with the plaintiff bank, and while the number of such competitors and the amount of capital so employed is not exactly known to the plaintiff, nevertheless plaintiff states that not less than 500 individuals and corporations, employing not less than fifty million dollars of capital are engaged in direct competition with one or more of the regular, proper business activities of the plaintiff; that the nature of such competitive activities consists of receiving deposits, buying and selling municipal and government securities and warrants, making loans upon real and personal property, discounting commercial paper, lending money with and without security, and practically every field of business activity open to the plaintiff bank; that there are substantial amounts of capital, and a substantial number of individuals and corporations directly engaged in competition with the plaintiff, their competitive business being such as normally enters into the business of banking, and all of such competitors are exempt from the tax herein complained of by the plaintiff. That by reason thereof the said provisions heretofore quoted in paragraph (a) are illegal and void as violative of the United States statutes, and as being an attempt by the State to tax

[fol. 48] banks in a manner not authorized or permitted by Congress, nor by the State of Oklahoma.

(c) Plaintiff further states that the said provisions of said legislative enactment heretofore quoted in paragraph (a) are illegal and void in that the State of Oklahoma is without authority of law to impose any tax upon any instrumentality of the Federal Government, upon any bonds, securities, or obligations of the United States, or upon the income or interest from the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax free; that all of the income from Federal securities herein mentioned was derived from interest upon the obligations of the United States and/or upon securities issued under authority of an Act of Congress, all of which income was and is tax free, and that the State is without authority to impose any tax thereon, either directly or indirectly; that the said provisions of said enactment heretofore quoted impose a tax upon such tax free income and interest in violation of law, and without authority of law. Plaintiff further states that it is beyond the taxing power of the State to impose the said tax herein complained of, and that the provisions heretofore quoted of the State law are invalid as interfering with, or tending to interfere with the power of the general government of the United States to borrow money on the credit of the United States, and that the tax hereby complained of materially impairs the power of the general government so to borrow money, and lessens the value negotiability and desirability of said tax free obligations of the United States [fol. 49] and the Securities issued under authority of an Act of Congress; that the State, being without authority or power to impose such tax, the provisions herein complained of are unconstitutional, ineffective, void and impose no legal obligation, and give no right to the said Oklahoma Tax Commission to collect said tax.

(d) For the reasons heretofore stated, the said quoted provisions of said legislative enactment are unconstitutional, illegal and void, and the tax imposed thereby is illegal and void, and the plaintiff is entitled to a recovery of the full amount of tax paid by reason of the imposition of such tax upon the interest and income received by plaintiff from obligations of the United States, and upon securities issued under authority of an Act of Congress, the income

from which is tax free as aforesaid, the amount of such recovery to which plaintiff is entitled on this item being as heretofore set forth.

4. Plaintiff states that it did not pay said tax voluntarily, but paid the same under compulsion and to avoid the imposition of burdensome penalties and the issuance of tax warrants, and the penalties of legal procedure to be instituted by the defendant and by the State in enforcing the collection of said illegal taxes. That when the term bank is used herein it is meant to include the bank as such and/or the shates of stock and shareholders, and covers the tax imposed by said [fol. 50] Act. That the Oklahoma Tax Commission has the custody and possession of said protested taxes and funds.

Wherefore, plaintiff prays judgment against the defendant for the sum of $6,622.65, with 3% interest thereon from the 7th day of July, 1937, and prays judgment for a refund of its said taxes heretofore mentioned, and paid under protest as aforesaid, and prays judgment for costs, and for all such other and further relief, both legal and equitable, as may be just and proper in the premises.

(Signed) E. A. Walker, Attorney for Plaintiff.

Duly sworn to by Roy G. Glass. Jurat omitted in printing.

[fol. 51] [File endorsement omitted]

[fol. 52] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ANSWER—Filed November 1, 1937

Comes now the above named Defendant and withdraws its demurrer to the Petition of the Plaintiff heretofore filed and filed this, its answer to Plaintiff's petition, and for such answer says:

[fol. 53] I

It denies all and singular the allegations therein contained except as hereinafter specifically admitted.

II

Defendant admits that Plaintiff is a banking corporation, organized under and by virtue of the laws of the United

States, with its principal place of business at Oklahoma City, Oklahoma, and admits that Defendant, Oklahoma Tax Commission, is a body organized and created under the laws of the State of Oklahoma, and that it is charged with the duty, among other things, of collecting income taxes due the State.

III

Defendant admits that Plaintiff, for the year 1936, duly filed its tax return before Defendant, Oklahoma Tax Commission, on Forms furnished by said Commission setting forth the amount of taxes alleged by it to be due the State for said year, and tendered the State the tax in accordance with such return, and Defendant admits that it re-audited such return and assessed additional tax against the Plaintiff in the sum of $6,622.65, as alleged in Plaintiff's petition, and Defendant admits that Plaintiff paid said additional tax so assessed against it under protest and within thirty days thereafter brought this action to recover the same.

[fol. 54]

IV

Defendant further admits that during the calendar year 1936 plaintiff received, as interest upon obligations of the United States, dividends from Federal Reserve Banks, and interest on municipal securities issued by municipalities of the State of Oklahoma, certain amounts as alleged in its petition, and Defendant admits that it included in the measure of tax such items as income. Defendant however, denies that in including such items it acted illegally or unlawfully and that in so doing, it deprived Plaintiff of any right guaranteed it either under the State or Federal Constitution.

V

Further answering herein, Defendant says that it included such items in the measure of tax under express authority granted by Sections 16, 17 and 18 of Article 6, Chapter 66, Session Laws 1935. Defendant specifically denies that said sections authorizing the inclusion of interest derived from governmental securities and dividends from Federal Reserve Banks in gross income is unconstitutional and void, and specifically denies that such sections violate any provisions of either the State or Federal Constitution. Defendant further denies that said sections are void in that they

are discriminatory against national banks or that the taxes imposed under said sections deprive Plaintiff of its prop- [fol. 55] erty without due process of law, or that the imposition of such taxes denies the Plaintiff the equal protection of the law and specifically denies that said sections violate either the provisions of the State or Federal Constitution, which prohibits the State from passing any law impairing the obligations of a contract. This Defendant further specifically denies that said sections of said Act, in so far as they authorize the includion of said items in gross income against national banks, are violative of the United States Revised Statute, Section 5219, as amended, but on the contrary alleges the facts to be that said section, as amended, specifically grants the State authority to include such items in measuring the tax as against National Banks.

Defendant further specifically denies that said sections of said Act were enacted for the sole and only purpose of singling out and taxing obligations of the United States and securities issued under authority of an Act of Congress, but allege the truth to be that said sections were enacted to change the method of assessment of the taxes against national banks from Method No. 3, authorized by the Acts of Congress, to Method No. 4, thereby authorized. Defendant specifically denies that said sections of said Acts are unconstitutional and void as interferring with the power of the Federal Government to borrow money.

[fol. 56]

VI

Further answering herein, Defendant specifically denies that the sections of said Act authorizing the inclusion in the measure of the tax interest derived from municipal securities issued by municipalities of the State, is in violation of any provision of either the State or Federal Constitution, and said Defendant specffically denies that, at the time the securities herein involved were issued, they were free from the tax here assessed under and by virtue of the provisions of the State Constitution, and this Defendant specifically denies that said sections of the Act authorizing the inclusion of interest derived from municipal securities in the measure of the tax is in violation of the constitutional provisions of the State or of the United States, which prohibits the State from passing any law impairing the obligation of a contract.

VII

Defendant further denies that said sections are unconstitutional in that they are violative of Sections 7 and 15 of Article 2, and Section 5 of Article 10, or Sections 54, 57 and 59 of Article 5 of the Constitution of the State of Oklahoma. [fols. 57-58] Further answering herein, Defendant specifically denies that the Income Tax Law of 1933 specifically exempting from taxation the items herein involved is now in full force and effect, and specifically denies that the Income Tax Act of 1935 does not repeal such sections of the 1933 Act purporting to grant said exemptions.

VIII

Further answering herein, Defendant says that the additional tax herein involved and assessed against the Plaintiff is in all respects properly and legally assessed against said Plaintiff, that said tax is justly and lawfully due from said Plaintiff to Defendant and that said Defendant is entitled to recover the entire amount so additionally assessed against Plaintiff.

Wherefore, Having fully answered herein, Defendant prays that Plaintiff take nothing by its suit, and that Defendants recover costs.

(Signed) C. D. Cund, A. L. Hess, Attorneys for Defendant.

[fol. 59] In District Court of Oklahoma County

[Title omitted]

Stipulation of Facts—Filed October 17, 1938

It is Stipulated and Agreed by and Between the Parties Hereto that the plaintiff herein is a National Banking Corporation organized and existing under and by virtue of the laws of the United States of America with its principal [fol. 60] place at Oklahoma City, Oklahoma; that it is engaged in the general banking business throughout the State of Oklahoma.

It is Further Stipulated and Agreed that on the 15th day of March, 1937, the Plaintiff in this action filed with the Defendant, Oklahoma Tax Commission, its corporation tax

return for the year 1936, a copy of which is attached hereto, marked Exhibit "A", and made a part hereof; that for the calendar year 1936, the Plaintiff reported in its said corporation tax return a net income of $22,840.40.

It is Further Stipulated by the Parties Hereto that in addition to the net income of $22,840.40, reported by the *by the* said bank in its corporation tax return for said year, it had the following net income:

Dividends received by Plaintiff on stock owned by it in the Federal Reserve Bank located at Kansas City, Missouri	$1,107.00
Interest received by the Plaintiff on bonds or securities issued by the United States Government and owned by the Plaintiff in the sum of	$107,639.31

It is Further Stipulated and Agreed that the net income of the Plaintiff for the calendar year 1936, less dividends received by it on stocks owned by it in the Federal Reserve Bank located at Kansas City, Missouri, and less interest received by it on bonds or securities issued by the United [fol. 61] States Government and owned by it, amounted to the sum of $22,840.40.

It is Further Stipulated that the Plaintiff in its corporation tax return for the year 1936 reported its net taxable income to be $22,840.40 and paid thereon to the State of Oklahoma a tax of 6% thereof, said tax being in the sum of $1,370.42.

It is Further Stipulated that thereafter and on June 10, 1937, the Defendant in this action assessed against the Plaintiff as shown by a letter, copy of which is hereto attached as Exhibit "B", an additional tax in the sum of $6,524.78, such additional tax being 6% of the sum of $108,746.31, net income received by the Plaintiff as dividends on stock owned by it in the Federal Reserve Bank in the amount of $1,107.00 and interest received by Plaintiff on securities owned by it and issued by the United States Government of America as shown by Exhibit "D", attached hereto, in the sum of $107,639.31, and that there was assessed by the Defendant against the Plaintiff as interest on said additional tax, the sum of $97.87.

It is Further Stipulated that said Plaintiff paid said additional tax of $6,524.78, together with interest thereon in

the sum of $97.87 to the Oklahoma Tax Commission on the 7th day of July, 1937; that said additional tax and interest was paid by the Plaintiff under protest and that this suit seeking the recovery thereof was instituted within thirty [fol. 62] (30) days from the date said amount was paid.

It is Further Stipulated that six thousand business and mercantile corporations filed corporation license tax returns for the year 1936 in the State of Oklahoma; that only thirty-seven of said corporations owned government bonds; that the table attached hereto and marked "Exhibit C", with the corporations denominated "A" to "KK", inclusive, reflect the true amount of government bonds owned by those corporations with the following explanation; the third column, which is denominated "Income Tax Thereon", is a computation of the income tax on such interest at the rate of six per cent (6%), but is is expressly stipulated that under the present income tax law no such tax was assessed or paid on such interest by said corporations, but that said corporations paid an income tax of 6% of their net income except such interest.

It is Further Stipulated that the corporate license tax paid, as shown in column four, is based on One Dollar ($1.00) per One Thousand Dollars ($1,000.00) on the value of the capital stock employed by said corporations within the State of Oklahoma and that the government bonds held by said corporations were included as capital in the measure of the tax and in addition thereto said corporations pay an ad valorem tax on their moneyed capital.

[fol. 63] It is further stipulated and agreed that the bonds or securities issued by the United States Government and owned by the Plaintiff from which it received the interest which the Defendant required it to include in its net income, are shown by Exhibit "D", hereto attached, and that such bonds were issued pursuant to Acts of Congress authorizing their issuance and that said Acts of Congress, under which said bonds were issued, may be by the court considered as a part of the record in this case.

Spiers & Bodovitz, Attorneys for Plaintiff. C. D. Cund, A. L. Herr, Attorneys for Defendant.

EXHIBIT "A" TO STIPULATION

File with the Oklahoma Tax Commission on or before the 15th day of the 3rd month after the close of your taxable year.

Corporation Income Tax Return
For Calendar Year 1937 or Fiscal Year Began 1-1-1937 and ended 12-31-1937

AUDITOR'S SPACE
Audited by
Date Received
Date Completed

File No. 761356

Name: Tradesmens National Bank
(PRINT NAME AND ADDRESS PLAINLY)
Street Address: 15th & Broadway
City: Oklahoma City State: Oklahoma
Date of incorporation: 1920 Under the laws of: U S A

Kind of Business: Banking — Is this return on Cash or Accrual Basis? Cash
Corporation books are kept by: Bank — Address: Oklahoma City, Okla.
Date Domesticated in Oklahoma: 1920 — How were inventories valued?
Did you make a return of information on Forms 989 and 991 for the calendar year 1937? (Answer "yes" or "no")

GROSS INCOME	COLUMN A As reported to Federal Bureau	COLUMN B Total Applicable to Oklahoma
1. Gross Sales (where inventories are used) Less Returns and Allowances		
2. Less: COST OF GOODS SOLD — COLUMN A / COLUMN B		
(a) Inventory beginning of year		
(b) Materials or merchandise purchased		
(c) Cost of producing (Schedule 1)		
(d) Total lines (a), (b), and (c)		
(e) Less: Inventory at close of year		
(f) Cost of goods sold (Item 2 (d) minus 2 (e))		
3. Gross Profit from Sales (Item 1 minus Item 2)		
4. Gross Receipts (where invent. not used)		
5. Less: Cost of Operations (Schedule 1)		
6. Gross Profit where Inventories not used (Item 4 minus line 5)		
7. Interest on Loans, Notes, Mortgages, Bonds, Municipal Bonds, etc.		137,120.54
8. Rents		24,166.55
9. Royalties		
10. Profit from Sale of Real Estate, Stocks, Bonds, etc. (Schedule 2)		64,776.38
11. Dividends on:		
(a) Stock of Corporations not doing business in Oklahoma		
(b) Stock of Corporations doing business in Oklahoma		
(c) Stock of Foreign Corporations		
12. Other Income (State nature of income) Schedule attached		42,136.34
(a)		
13. TOTAL INCOME IN ITEMS 3, and 6 to 12 (inclusive)		268,199.81

DEDUCTIONS	
14. Compensation of Officers (Schedule 3)	30,833.33
15. Rent on Business Property	
16. Repairs (Schedule 4)	2,615.41
17. Interest	61,960.39
18. Taxes (Schedule 5)	24,569.30
19. Losses (Schedule 6)	
20. Bad Debts (Schedule 7)	9,901.89
21. Dividends (Schedule 8)	
22. Depreciation (Schedule 9)	17,119.15
23. Depletion (Schedule 10)	
24. Other Deductions not reported above (Explain below)	
(a) Wages	52,298.11
Schedule attached	16.36

1. Gross Sales (where Inventories are used) Less Returns and Allowances					
2. Less: COST OF GOODS SOLD	COLUMN A		COLUMN B		
(a) Inventory beginning of year					
(b) Materials or merchandise purchased					
(c) Cost of producing (Schedule 1)					
(d) Total lines (a), (b), and (c)					
(e) Less: Inventory at close of year					
(f) Cost of goods sold (Item 2 (d) minus 2 (e))					
3. Gross Profit from Sales (Item 1 minus Item 2)					
4. Gross Receipts (where invent. not used)					
5. Less: Cost of Operations (Schedule 1)					
6. Gross Profit where Inventories not used (Item 4 minus line 5)					
7. Interest on Loans, Notes, Mortgages, Bonds, Municipal Bonds, etc.					137,120.54
8. Rents					24,166.55
9. Royalties					
10. Profit from Sale of Real Estate, Stocks, Bonds, etc. (Schedule 2)					64,776.38
11. Dividends on:					
(a) Stock of Corporations not doing business in Oklahoma					
(b) Stock of Corporations doing business in Oklahoma					
(c) Stock of Foreign Corporations					
12. Other Income (State nature of income) Schedule attached					12,136.34
(a)					
13. TOTAL INCOME IN ITEMS 3, and 6 to 12 (Inclusive)					268,199.81
DEDUCTIONS					
14. Compensation of Officers (Schedule 3)					30,833.33
15. Rent on Business Property					
16. Repairs (Schedule 4)					2,615.41
17. Interest					61,960.39
18. Taxes (Schedule 5)					24,569.30
19. Losses (Schedule 6)					
20. Bad Debts (Schedule 7)					9,901.99
21. Dividends (Schedule 8)					
22. Depreciation (Schedule 9)					17,119.15
23. Depletion (Schedule 10)					
24. Other Deductions not reported above (Explain below)					
(a) Wages					52,298.11
(b) Schedule attached					16,361.73
(c)					
25. TOTAL DEDUCTIONS IN ITEMS 14 to 24					215,659.41
26. NET INCOME (Item 13 minus Item 25)					22,810.40
INCOME TAX COMPUTATION					
27. TAX AT 6% (On Item 26, Column B, above)					22,810.40
28. INTEREST AT 6%				1,370.42	
29. PENALTY					
30. TOTAL TAX, INTEREST AND PENALTY (Total Lines 27 28 and 29)					1,370.42

SCHEDULE—BALANCE SHEETS

ITEMS	BEGINNING OF TAXABLE YEAR		END OF TAXABLE YEAR	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		$ 9,181,265.18		$ 9,512,854.23
2. Notes Receivable	$	500,127.13	$	472,946.82
3. Accounts Receivable Overdrafts		9.70		92.99
(a) Less Reserve for Bad Debts				
4. Inventories:				
(a) Raw Materials	$		$	
(b) Work in Process				
(c) Finished Goods				
(d) Supplies				
5. Investments:				
(a) Obligations of a State or any political subdivision thereof	$	2,382,274.89	$	2,009,697.34
(b) Securities issued under authority of an Act of Congress		776,500.00		185,000.00
(c) Obligations of the United States or its possessions		2,479,655.00		2,498,150.00
(d) Stocks of Domestic Corporations		18,109.20		18,778.00
(e) Bonds of Domestic Corporations		192,100.00		272,013.75
(f) Stocks and Bonds of Foreign Corporations		49,000.00		974,711.75
(g) All other Investments or loans Total Investments		5,897,639.08		5,952,355.34
6. Deferred Charges:				
(a) Prepaid Insurance	$		$	
(b) Prepaid Taxes				
(c) All Other				
7. Capital Assets:				
(a) Land	$		$	
(b) Buildings		331,265.50		311,265.50
(c) Machinery and Equipment		35,114.25		35,114.25
(d) Furniture and Fixtures		63,620.25		53,620.25
(e) Delivery Equipment				
(f) Less Reserve for Depreciation (Depletion) Total Capital Assets	$	430,000.00	$	400,000.00
8. Patents	$		$	
9. Good Will				
10. Other Assets (describe fully):				
	$		$	
11. TOTAL ASSETS		96,012,061.09		96,338,149.88
LIABILITIES				
12. Notes Payable (Less than 1 year)	$		$	
13. Accounts Payable Dividends		15,000.00		15,000.00
14. Bonds and Notes (not secured by Mortgage)				
15. Mortgages (including bonds and notes so secured)				
16. Accrued Expenses:				
(a) Interest	$		$	
(b) Taxes				
(c) All Other Reserve Acct		100,000.00		100,000.00
17. Other Liabilities (describe fully):	$		$	
Deposits		15,255,702.52		15,193,906.58

pledged countries thereof		2,382,274.89		2,008,697.31
(b) Securities issued under authority of an Act of Congress		776,500.00		185,000.00
(c) Obligations of the United States or its possessions		2,179,655.00		2,193,150.00
(d) Stocks of Domestic Corporations		18,109.20		18,778.00
(e) Bonds of Domestic Corporations		192,100.00		272,013.75
(f) Stocks and Bonds of Foreign Corporations		49,000.00		974,711.75
(g) All other investments or loans				
6. Deferred Charges:		5,897,639.08		5,952,355.94
(a) Prepaid Insurance				
(b) Prepaid Taxes				
(c) All Other				
7. Capital Assets:				
(a) Land				
(b) Buildings				
(c) Machinery and Equipment		331,265.50		311,265.50
(d) Furniture and Fixtures		35,114.25		35,114.25
(e) Delivery Equipment		63,620.25		53,620.25
(f) Less Reserves for Depreciation				
Total Capital Assets		430,000.00		400,000.00
8. Patents				
9. Good Will				
10. Other Assets (describe fully):				
11. TOTAL ASSETS		26,012,061.09		26,338,119.88
LIABILITIES				
12. Notes Payable (Less than 1 year)				
13. Accounts Payable Dividends		15,000.00		15,000.00
14. Bonds and Notes (not secured by Mortgage)				
15. Mortgages (including bonds and notes so secured)				
16. Accrued Expenses:				
(a) Interest				
(b) Taxes				
(c) All Other Reserve Acct		100,000.00		100,000.00
17. Other Liabilities (describe fully): Deposits		15,255,702.52		15,493,906.58
18. Capital Stock:				
(a) Preferred Stock (Less Stock in Treasury)				
(b) Common Stock (Less Stock in Treasury)		500,000.00		500,000.00
19. Surplus		110,000.00		130,000.00
20. Undivided Profits		31,358.57		99,213.30
21. TOTAL LIABILITIES		26,012,061.09		26,338,119.88

Schedule 2 Capital, Gains & Losses
(from sales or exchanges)
TRADESMENS NATIONAL BANK, OKLAHOMA CITY
INCOME TAX RETURN 1936

Date Sold	Description	Disposition	Sales Price	Cost	Gain	Loss
2- 5-36	3% U. S. Treas. Bonds	Sold	$ 51,500.00	$ 50,000.00	$ 1,500.00	$
2-10-36	" " "	"	51,500.00	50,000.00	1,500.00	
3-26-36	" " "	"	52,000.00	50,000.00	2,000.00	
5-18-36	" " "	"	25,080.00	24,000.00	1,080.00	
11-13-36	2 1/8% " "	"	10,353.13	10,000.00	353.13	
11-20-36	4% " " "	"	4,405.63	3,800.00	605.63	
12-23-36	3 1/8% " "	"	16,275.00	15,000.00	1,275.00	
2-13-36	Ohio Penn Jt. S. L. Bank	"	4,850.00	4,625.00	225.00	
3- 6-36	Dominion of Canada	"	32,475.00	29,000.00	3,475.00	
3-11-36	Tulsa, Oklahoma Bonds	"	5,318.68	5,000.00	318.68	
3-11-36	" " "	"	11,254.00	10,000.00	1,254.00	
3-11-36	Okla. City, Okla. Bonds	"	33,258.37	30,000.00	3,258.37	
3-11-36	Tulsa, Okla. Bonds	"	5,511.00	5,000.00	511.00	
3-15-36	Fed. Land Bank Bonds	Exchange	77,385.00	77,000.00	385.00	
3-15-36	" " " "	"	100,500.00	100,000.00	500.00	
3-20-36	Washita Co. Oklahoma	Sold	11,350.00	10,000.00	1,350.00	
3-21-36	Logan County, Okla.	"	11,400.00	10,000.00	1,400.00	
4- 2-36	Texas Corporation	Called	3,030.00	2,950.00	80.00	
4-17-36	" "	"	2,020.00	1,900.00	120.00	
5- 5-36	Norman, Oklahoma Bonds	Sold	11,260.00	10,000.00	1,260.00	
5-19-36	Pottawatomie Co. Bonds	"	22,550.00	20,000.00	2,550.00	
5-29-36	Chickasha, Okla. Bonds	"	18,600.00	16,000.00	2,600.00	
6- 2-36	Pawnee Co. Okla. Bonds	"	11,135.00	10,000.00	1,135.00	
6- 9-36	Okla. County Bonds	"	22,410.00	20,000.00	2,410.00	
6-11-36	Sand Springs, Okla. Bonds	"	18,900.00	18,000.00	900.00	
6-11-36	Muskogee, Okla. Bonds	"	13,394.40	12,000.00	1,394.40	
6-24-36	Utilities, Po. & Lt. Bonds	"	8,160.00	5,042.50	3,117.50	
7- 2-36	McAlester, Okla. Bonds	"	16,641.60	16,000.00	641.60	
7- 6-36	Muskogee, Okla. Bonds	"	5,245.00	5,000.00	245.00	
7- 6-36	" " "	"	5,245.00	5,000.00	245.00	
7- 6-36	Okla. City Bonds	"	23,400.00	20,000.00	3,400.00	

Date Sold	Description	Disposition	Sale Price	Cost	Gain	Loss
7-15-36	Henryetta, Okla. Bonds	Sold	10,200.00	10,000.00	200.00	
7-17-36	Idabel, Okla. Bonds	"	22,220.00	22,000.00	220.00	
7-24-36	Edmond, Okla. Bonds	"	11,046.91	10,000.00	1,046.91	
7-24-36	Anadarko, Okla. Bonds	"	5,493.30	5,000.00	493.30	
7-30-36	Perry, Okla. Bonds	"	10,900.00	10,000.00	900.00	
7-30-36	Noble Co. Okla. Bonds	"	8,920.00	8,000.00	920.00	
8- 1-36	McAlester, Okla. Bonds	"	22,963.18	21,000.00	1,963.18	
8- 8-36	Newkirk, Okla. Bonds	"	7,931.00	7,000.00	931.00	
9-11-36	Frederick, Okla. Bonds	"	11,300.00	10,000.00	1,300.00	
9-18-36	Sayre, Okla. Bonds	"	5,600.00	5,000.00	600.00	
9-18-36	McAlester, Okla. Bonds	"	11,050.00	10,000.00	1,050.00	
9-19-36	Sayre, Okla. Bonds	"	23,520.00	21,000.00	2,520.00	
9-28-36	Davis, Okla. Bonds	"	4,240.00	4,000.00	240.00	
10- 5-36	Texas Corporation	Called	19,190.00	17,550.00	1,640.00	
10-12-36	Davis, Okla. Bonds	Sold	16,960.00	16,000.00	960.00	
10-19-36	Detroit Jt. Stock L. Bank	"	2,951.25	2,932.50	18.75	
10-19-36	" " " " "	"	1,967.50	1,955.00	12.50	
10-27-36	Bartlesville, Okla. Bonds	"	5,687.50	5,000.00	687.50	
11- 7-36	Holdenville, Okla. Bonds	"	10,500.00	10,319.31	180.69	
11-17-36	Okla. City, Okla. Bonds	"	14,581.56	12,000.00	2,581.56	
12- 5-36	Okla. Gas & Elec. Bonds	"	5,171.99	4,500.00	671.99	
12-10-36	Tennessee Bonds	"	37,684.14	35,000.00	2,684.14	
12-16-36	Grady Co. Okla. Bonds	"	5,441.50	5,000.00	441.50	
1- 4-36	Cons. F. L. Bank Bonds	Exchange	10,125.00	10,000.00	125.00	
3-20-36	Dallas J. S. L. Bonds	Called	5,000.00	4,950.00	50.00	
7-31-36	Caddo Co. Oklahoma Bonds	Sold	25,831.25	25,000.00	831.25	
9-16-36	Federal Land Bank Bonds	Marked Up	6,000.00	5,100.00	900.00	
9-30-36	Sapulpa, Okla. Bonds	Sold	4,725.00	5,000.00		275.00
10-15-36	Lincoln J. S. L. B. Bonds	"	6,370.00	6,580.00		210.00
10-19-36	Ohio Penn. J. S. L. B. Bonds	"	3,935.00	3,955.00		20.00
10-19-36	Ohio Penn. J. S. L. B. Bonds	"	983.75	988.75		5.00
	Commission on Sale of Bonds				27.80	
			$1,024,896.64	$960,148.06	$65,286.38	$510.00
	Loss				510.00	
	Gain less Loss				$64,776.38	

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Schedule 7, Bad Debts

TRADESMENS NATIONAL BANK, OKLAHOMA CITY, OKLAHOMA

INCOME TAX RETURN-1936

DATE	NAME	ITEM	AMOUNT
6 - 9-36	Overdrafts		$ 67.33
6 -30-36	A. F. Tullius	Note	190.00
6 -30-36	Bank of Elmer, Elmer, Okla.	Notes	2,761.97
6 -30-36	Bank of Gotebo, Gotebo, Okla.	Notes	2,923.40
6 -30-36	Farmers State Bank, Olustee, Okla.	Notes	2,086.39
9 -18-36	Overdrafts		97.61
11-4- 36	Tellers Differences		30.00
11-4- 36	Tellers Differences		15.00
11-4-36	Tellers Differences		30.00
12-30-36	Overdrafts		32.88
12-31-36	Tellers Differences		65.41
12-31-36	W. H. Stewart	Check	2.00
12-31-36	W. H. Johnson	Note	50.00
12-31-36	Gale Picow	Note	500.00
12-31-36	A. Shipman	Note	1,050.00
			$9,901.99

COPY

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Schedule: Other Income, Item 12

TRADESMENS NATIONAL BANK
OKLAHOMA CITY, OKLA.

INCOME TAX RETURN 1936

Service Charges	$13,178.38
Exchange Received	2,676.15
Losses Recovered (Loans)	4,430.90
Losses Recovered (Bonds & Securities)	10,500.00
Losses Recovered (Others previously charged off)	-11,650.91
	$42,436.34

Schedule 24B; OTHER DEDUCTIONS

TRADESMENS NATIONAL BANK, OKLAHOMA CITY, OKLAHOMA

INCOME TAX RETURN 1936

Freight and Express	$ 845.57
Postage	3,013.73
Stationery & Supplies	5,145.64
Traveling Expenses	2,272.08
Insurance & Bonds	5,997.33
Advertising	994.26
Telephone & Telegraph	1,080.71
Clearing House Expense	1,372.25
Membership & Dues	1,048.04
Court Cost & Attorney Fees	327.44
Bank Examinations	1,220.45
Exchange Paid	1,374.51
Water & Lights	3,077.62
Electric Power	2,753.93
Electric Supplies	91.43
Elevator Expense	767.99
Engine Room Expense	716.51
Fuel	480.39
Janitor Supplies	246.56
Toilet Supplies	156.37
Sundry (Bldg.)	113.49
Sundry (Bank)	1,110.50
F D I C Payment	7,747.54
F D I C Payment	4,407.39
Total	$46,361.73

Schedule - Compensation of Officers;
Tradesmens National Bank, Oklahoma City, Oklahoma.

INCOME TAX RETURN 1936

Name & Address of Officer	Official Title	Time Devoted to business	Shares of Stock owned.	Amount of Compensation
E. A. Walker Oklahoma City, Oklahoma.	President.	All	3402	$ 7,500.00
Leon G. Voorhees Oklahoma City, Okla.	Vice-President	All	1010	3,750.00
C. P. Vance Oklahoma City, Okla.	Vice-President	All	50	5,208.33
F. C. Morey Oklahoma City, Okla.	Vice-President	All	10	2,500.00
John Rinehart Oklahoma City, Okla.	Vice-President	All	None	3,125.00
Roy G. Glass Oklahoma City, Okla.	Cashier	All	10	4,062.50
Spence Miller Oklahoma City, Okla.	Assistant Cashier	All	None	2,500.00
J. E. Musgrave Oklahoma City, Okla.	Assistant Cashier	All	None	2,187.50
				$30,833.33

SCHEDULE 1—COST OF SALES OR OPERATIONS (to Item 2 (c) Page 1)

Page 3

Items	Amount	Items	Amount
Salaries and Wages			
Materials and Supplies			

SCHEDULE 2—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.

Kind of Property	Shares or Quantity	Date Acquired	Amount Realized	Cost	Fair Market Value on Jan. 1, 1931	Allowable Depreciation	Net Profit
	Schedule Attached						
(Capital Losses deductible only from Capital Gains—See Instruction 10)							

SCHEDULE 3—COMPENSATION OF OFFICERS

Name of Officer	Address	Official Title	Time to Business	Shares of Stock Owned: Common	Shares of Stock Owned: Preferred	Total Compensation	Oklahoma Compensation
	Schedule Attached						

SCHEDULE 4—REPAIRS

Items	Total Cost of Repairs	Oklahoma Repairs
Salaries and Wages		
Materials and Supplies		
Bank		1,815.19
Bank Building		799.92
		2,615.11

SCHEDULE 5—TAXES PAID

Kind of Tax	Total Tax Paid	Oklahoma Tax Paid
Real Estate Tax		19,200.55
Capital Stock Tax		2,000.00
State Income Tax		3,191.58
Excise Tax		177.17
		24,569.30

SCHEDULE 6—EXPLANATION OF LOSSES BY FIRE, STORM, ETC.

Kind of Property	Date Acquired	Cost	Fair Market Value on January 1, 1931	Allowable Depreciation	Insurance or Salvage Value	Deductible Loss

SCHEDULE 7—BAD DEBTS

Year	How Created	Notes Charged Off	Accounts Charged Off
1932			18,005.19
1933			15,889.13
1934			32,594.94
1935			69,910.85
1936			9,901.99

Attach sheet giving full information

SCHEDULE 8—DIVIDENDS DEDUCTIBLE

Name of Corporation	State Inc.	Outside Oklahoma	Within Oklahoma
Federal Reserve Bank			1,107.00

SCHEDULE 9—DEPRECIATION CLAIMED

Kind of Property	Date Acquired	Age When Acquired	Probable Life	Rate %	Cost or Jan. 1, 1931 Value (See Note)	Depreciation Allowed or Allowable in prior years	Remaining Cost or other basis to be recovered	Depreciation claimed this year
Bank Building	1921	New	56 2/3		603,180.43	42,598.60	560,881.83	10,619.65
Vault & Equipment	1921	New	23 1/3		33,475.58	5,738.64	27,736.94	1,431.66
F A F (Heavy)	1921	New	10	10	45,176.19	18,070.44	27,105.75	4,517.61
F A F (Light)	1933	New	10	10	5,172.35	1,034.46	4,137.99	517.23

Note If basis other than cost is used, submit separate schedule showing cost and other basis with explanations)

17,119.15

SCHEDULE 10—DEPLETION CLAIMED (See Schedule below)

Kind of Property	Gross Income From Oil, Gas, Minerals, etc.	Operating Expenses Including Depreciation	Net Income	% of Gross Income	50% of Net Income	Depletion Claimed
1						
2						
3						
4						
5						

SCHEDULE 3—COMPENSATION OF OFFICERS

Name of Officer	Address	Official Title	Time to Business	Shares of Stock Owned: Common	Shares of Stock Owned: Preferred	Total Compensation	Oklahoma Compensation
	Schedule Attached						

SCHEDULE 4—REPAIRS

Items	Total Cost of Repairs	Oklahoma Repairs
Salaries and Wages		
Materials and Supplies		
Bank		1,815.19
Bank Building		799.92
		2,615.11

SCHEDULE 5—TAXES PAID

Kind of Tax	Total Taxes Paid	Oklahoma Taxes Paid
Real Estate Tax		19,200.55
Capital Stock Tax		2,000.00
State Income Tax		3,191.58
Excise Tax		174.17
		24,566.30

SCHEDULE 6—EXPLANATION OF LOSSES BY FIRE, STORM, ETC.

Kind of Property	Date Acquired	Cost	Per Return Value on January 1, 1931	Allowable Depreciation	Insurance or Salvage Value	Deductible Loss

SCHEDULE 7—BAD DEBTS

Year	How Created	Notes Charged Off	Accounts Charged Off
1932			18,005.19
1933			45,888.13
1934			32,596.91
1935			69,910.85
1936			9,901.99

Attach sheet giving full information

SCHEDULE 8—DIVIDENDS DEDUCTIBLE

Name of Corporation	State Inc.	Outside Oklahoma	Within Oklahoma
Federal Reserve Bank			1,107.00

SCHEDULE 9—DEPRECIATION CLAIMED

Kind of Property	Date Acquired	Age When Acquired	Probable Life	Rate %	Cost or Jan. 1, 1931 Value (See Note)	Depreciation Allowed (or Allowable in prior years)	Remaining Cost or other basis to be recovered	Depreciation claimed this year
Bank Building	1921	New	56 2/3		603,480.43	42,598.60	560,881.83	10,619.65
Vault & Equipment	1921	New	23 1/3		33,475.58	5,738.64	27,736.94	1,431.66
F & F (Heavy)	1921	New	10	10	45,176.19	18,070.44	27,105.75	4,517.61
F & F (Light)	1933	New	10	10	5,172.35	1,034.46	4,137.89	517.23

Note If basis other than cost is used, submit separate schedule showing cost and other basis with explanations)

17,119.15

SCHEDULE 10—DEPLETION CLAIMED (See Schedule below)

Kind of Property	Gross Income From Oil, Gas, Minerals, etc.	Operating Expenses (without Depreciation)	Net Income	% of Gross Income	50% of Net Income	Depletion Claimed
1.						
2						
3						
4						
5						

STATEMENT OF DEPLETION SUSTAINED TO DATE

Kind of Property	Cost of Property	Depletion Sustained to January 1, 1931	Depletion Value on January 1, 1931	Depletion Allowed Since January 1, 1931	Depleted Value on December 31, 1936
1.					
2.					
3					
4.					
5.					

Form 4

RECONCILIATION OF NET INCOME AND ANALYSIS OF SURPLUS

1. Net Taxable Income (from Line 28, Page 1)			22,810.40
2. Non-Taxable Income (detail):			
(a) Interest on U S Government obligations	107,639.31		
(b) Dividends from Federal Reserve Bank	1,107.00		
(c)			108,746.31
3. Total Taxable and Non-Taxable Income (Total Lines 1 and 2)			131,586.71
4. Unallowable Deductions (detail):			
(a) Donations 1936	500.00		
(b) Debits to Reserve account 1936	6,003.14		
(c)			6,503.14
5. Net Profit as per Books for Year (Line 3 minus Line 4)			125,083.57
6. Surplus and Undivided Profits at beginning of Year			241,318.57
7. Additions to Surplus during Year (detail):			
(a) Depreciation 1936	17,119.15		
(b) Loss charged off on Banks books in 1932 on Utilities Power Bonds not taken in tax return until bonds sold in 1936	2,093.75		
(c) Credits to Reserve Account 1936	3,588.26		22,801.16
8. Total Lines 5 to 7			389,213.30
9. Deductions from Surplus during Year (detail):			
(a) Charge off on Furniture & Fixtures	10,000.00		
(b) Charge off on Bank Building	20,000.00		
(c)			
Dividends — Date Paid — How Paid?			
(a) 6-30-36 — Cash	15,000.00		
(b) 12-31-36 — Cash	15,000.00		
(c)			
10. Total Deductions from Surplus (Total Items Line 9)			60,000.00
11. Surplus and Undivided Profits at Close of Year, as per Books (Line 8 minus Line 10)			329,213.30

GIVE NAME, ADDRESS AND RELATIONSHIP OF ALL AFFILIATED CORPORATIONS

Name	Address	Relationship

STATE OF Oklahoma)
COUNTY OF Oklahoma) ss.

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Oklahoma Income Tax Law of 1935, and the Regulations issued thereunder.

Subscribed and sworn to before me this 13th day of March, 1937

(Signed) C P Vance
Vice President (Signature of officer) (State title)

CORPORATE SEAL

(Signed) Tom S. Myers
(Signature of officer administering oath) (State title)

(Signed) Roy G Glass
Cashier (Signature of Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

My commission expires Nov. 27, 1939

AFFIDAVIT (for "Signature and Verification", on Instruction Sheet)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ..... day of ....., 193

Roy G Glass
(Signature of person preparing the return)

(Signature of person preparing the return)

(c) Credits to Reserve Account 1936 in 1936	3,598.26		22,801.16
8. Total Lines 5 to 7			389,213.30
9. Deductions from Surplus during Year (detail):			
(a) Charge off on Furniture & Fixtures	10,000.00		
(b) Charge off on Bank Building	20,000.00		
(c)			
Dividends — Date Paid — How Paid?			
(a) 6-30-36 Cash	15,000.00		
(b) 12-31-36 Cash	15,000.00		
(c)			
10. Total Deductions from Surplus (Total Items Line 9)			60,000.00
11. Surplus and Undivided Profits at Close of Year, as per Books (Line 8 minus Line 10)			329,213.30

GIVE NAME, ADDRESS AND RELATIONSHIP OF ALL AFFILIATED CORPORATIONS

Name	Address	Relationship

STATE OF Oklahoma)
COUNTY OF Oklahoma) ss.

AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Oklahoma Income Tax Law of 1933, and the Regulations issued thereunder.

Subscribed and sworn to before me this 13th day of March, 1937

(Signed) C P Vance
Vice President (or other principal officer) (State title)

NOTARIAL SEAL

(Signed) Tom S. Myers
(Signature of officer administering oath) (Title)

CORPORATE SEAL

(Signed) Roy G Glass
Cashier (Treasurer, Assistant Treasurer, or Chief Accounting Officer) (State title)

My commission expires Nov. 27, 1939

AFFIDAVIT (See "Signatures for Verification", on Instruction Sheet)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this ..... day of ....., 193

Roy G Glass
(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

NOTARIAL SEAL

(Signature of officer administering oath) (Title)

[fol. 74] EXHIBIT "B" TO STIPULATION

Copy

June 10 1937 File #761356 JKS 1936

Income Tax

Tradesmens National Bank,
Main and Broadway,
Oklahoma City, Okla.

GENTLEMEN:

An office audit of your 1936 Corporation Income Tax Return discloses additional tax and interest due in the amount of $6,622.65, computed as follows:

Net Income—per Return		$22,840.40
Additions to Income:		
(a) Interest of U. S. Government Obligations	$107,639.31	
(b) Dividends from Federal Reserve Bank	1,107.00	
Net Additions to Income		$108,746.31
Adjusted Net Taxable Income		$131,586.71

[fol. 75] Computation of Tax

Tax on $131,586.71 at 6%	$7,895.20
Less: Tax Previously Assessed	1,370.42
Additional Tax Due	$6,524.78
Interest at 6% from 3-15-37 to 6-15-37	97.87
Total Additional Tax and Interest	$6,622.65

If you do not acquiesce in this assessment, you may submit your protest and additional information in a sworn statement, or you will, upon request, be granted a hearing before this Commission. If no such protest is made within thirty days from the date of this letter, the computation of tax will be considered final. If not paid within that period, the assessment will bear interest at one per cent per month from date of notice and demand.

Yours very truly, Oklahoma Tax Commission, Commissioner.

JKS:B.

[fol. 76] EXHIBIT "C" TO STIPULATION

Comparative Schedule of Income Tax on Federal Exempt Bond Interest vs. Corporation Licenses

		Federal Bonds Owned	Interest Reported Thereon	Income Tax Thereon	Corp. Lic. Tax Paid
"A"	Company	$4,750.00	$142.50	$8.55	$130.00
"B"	Company	13,500.00	1,437.15	74.23	73.00
"C"	Company	34,928.13	1,552.42	93.15	552.00
"D"	Company	13,543.75	548.43	32.91	510.00
"E"	Company	29,116.25	805.00	48.30	428.00
"F"	Company	30,520.23	850.00	51.00	94.00
"G"	Company	26,013.19	715.77	42.95	1,549.00
"H"	Company	5,990.40	169.19	10.15	193.00
"I"	Company	24,584.68	1,643.74	98.62	227.00
"J"	Company	6,350.00	189.25	11.36	72.00
"K"	Company	88,640.12	2,613.17	156.79	111.00
"L"	Company	462,674.13	6,149.08	368.94	5,223.00
"M"	Company	69,940.63	2,025.00	121.50	300.00
"N"	Company	7,827.10	300.00	18.00	80.00
"O"	Company	30,968.39	2,025.13	121.50	884.00
"P"	Company	30,000.00	862.50	51.75	352.00
"Q"	Company	103,989.42	2,329.33	139.76	342.00
"R"	Company	3,128.43	50.07	3.00	241.00
[fol. 77]					
"S"	Company	10,290.63	301.04	18.06	208.00
"T"	Company	257,395.00	7,072.19	424.33	1,091.00
"U"	Company	91,328.90	1,758.32	105.50	147.00
"V"	Company	10,472.55	7,477.01	448.62	261.00
"W"	Company	17,398.44	510.00	30.60	1,223.00
"X"	Company	285,000.00	2,016.57	120.99	862.00
"Y"	Company	600.00	.....	.....	150.00
"Z"	Company	9,675.00	.....	.....	83.00
"AA"	Company	1,400.00	.....	.....	78.00
"BB"	Company	150.00	.....	.....	172.00
"CC"	Company	583.57	.....	.....	75.00
"DD"	Company	2,870.93	.....	.....	45.00
"EE"	Company	3,900.00	.....	.....	239.00
"FF"	Company	375.00	.....	.....	17.00
"GG"	Company	1,949.00	.....	.....	47.00
"HH"	Company	20,273.39	.....	.....	1,669.00
"II"	Company	10,000.00	.....	.....	111.00
"JJ"	Company	76,615.64	.....	.....	1,008.00
"KK"	Company	1,500.00	.....	.....	64.00

[fol. 78] The figures as to "V" Company. are subject to the following explanation: On July 1, 1936, this company owned $258,309.63 in Federal Securities upon which the interest mentioned in column two was computed. During the year 1936 this company disposed of all but $10,472.55 of these securities. The estimated earnings of which sum had been approximately $314.00. The corporation license fee paid by this corporation from the previous year before it disposed of the securities amounted to $391.00.

Filed in District Court, Oklahoma County, Okla. Oct. 27, 1938. Cliff Myers, Court Clerk, by Frances Cruce, Deputy.

[fol. 79] EXHIBIT "D" TO STIPULATION

Non-Taxable Income—1936

Interest on Bonds of the Federal Farm Loan Act:	
3% Federal Farm Mtg. Corp. Bonds of 1942-47,	
3¼% Federal Farm Mtg. Corp. Bds. of 1944-64,	
3% Federal Farm Mtg. Corp. Bonds of 1944-49	$5,504.75
Interest on U. S. Treasury Notes, Bills and Certificates of Indebtedness:	
2¾% U. S. Treasury Notes, Series B, 1936	2,925.33
Interest on U. S. Treasury Bonds:	
2¾% Treasury Bonds of 1945-47,	
2¾% Treasury Bonds of 1948-51,	
2¾% Treasury Bonds of 1951-54,	
2⅞% Treasury Bonds of 1955-60,	
3% Treasury Bonds of 1946-49,	
3⅛% Treasury Bonds of 1946-49,	
3⅛% Treasury Bonds of 1949-52,	
2¼% Treasury Bonds of 1943-45,	
3¼% Treasury Bonds of 1944-46,	
3⅜% Treasury Bonds of 1940-43,	
3⅜% Treasury Bonds of 1941-43,	
3⅜% Treasury Bonds of 1943-49,	
3½% Treasury Bonds of 1946-49,	
4% Treasury Bonds of 1944-54	57,638.53
[fol. 80] Interest on Other Instrumentalities of the United States:	
5% Joint Stock Land Bank Bonds,	
4¾% Joint Stock Land Bank Bonds,	
4¼% Joint Stock Land Bank Bonds,	
4½% Joint Stock Land Bank Bonds	$5,528.75
2¾% Home Owners' Loan Corp. Bds. of 1939-49,	
3% Home Owners' Loan Corp. Bonds of 1944-52,	
1½% Home Owners' Loan Corp. Bds. of 1939,	
2¼% Home Owners' Loan Corp. Bds., Series G	10,419.08

3% Federal Land Bank Bonds of 1945-55, 3% Federal Land Bank Bonds of 1946-56, 3¼% Federal Land Bank Bonds of 1945-55, 4% Federal Land Bank Bonds of 1944-46, 4¼% Federal Land Bank Bonds of 1938-58, 4½% Federal Land Bank Bonds of 1946-56	25,622.87
	41,570.70
	$107,639.31
Dividends on Federal Reserve Bank Stock	1,107.00
	$108,846.31

[fol. 81] [File endorsement omitted.]

[fol. 82] IN DISTRICT COURT OF OKLAHOMA COUNTY

No. 93,837

TRADESMENS NATIONAL BANK, a Corporation, Plaintiff,

vs.

THE OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA, Defendant

JUDGMENT—Filed Oct. 17, 1938

This matter coming on for hearing before Hon. Lucius Babcock, Judge of the District Court, this 17th day of October, 1938, pursuant to regular assignment. The plaintiff [fol. 83] appeared by its attorneys, Spiers & Bodovitz, and the defendant appeared by its attorney, C. D. Cund, and both the parties announcing ready for trial and a jury being waived in open court, the court proceeded to hear said cause.

The parties thereupon introduced in evidence the stipulation of the parties heretofore filed in this cause, which stipulation contains all the facts, evidence and testimony to be offered by both sides.

The court, being fully advised in the premises and on consideration thereof, finds that the allegations of plaintiff's petition are not supported and sustained by the facts and

the law applicable thereto, and judgment is therefore rendered for the defendant and it is adjudged that the defendant go hence without day; to which finding and judgment plaintiff then and there excepted and thereupon gave notice of its intention to appeal to the Supreme Court of the State of Oklahoma.

There then coming on for hearing the motion of the plaintiff herein for a new trial and the court being fully advised in the premises and upon consideration thereof, finds that the same should be overruled.

It Is, Therefore, Ordered, Adjudged and Decreed that said motion for new trial be and the same is hereby overruled, to which ruling the plaintiff then and there excepted and gave notice in open court of its intention to appeal to the Supreme Court of the State of Oklahoma.

[fol. 84] And said plaintiff pray[illegible], an appeal to the Supreme Court and an extension [illegible] time in which to make and serve case-made, it is ordered that an extension of thirty days from this date be granted plaintiff to make and serve case-made, defendant to have three days thereafter to suggest amendments, same to be settled on three days notice in writing by either party.

O. K.:

(Signed) Spiers & Bodovitz, Attorneys for Plaintiff.

O. K.:

(Signed.) C. D. Cund, Attorneys for Defendant.

(Signed.) Lucius Babcock, Judge.

[fol. 85] [File endorsement omitted.]

[fol. 86] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 4, 1939

To the Clerk of the Above Named Court:

You are hereby requested and directed to make a transcript of the record in the above styled and numbered cause to be filed in the Supreme Court of the United States pur-

suant to an appeal allowed in the above entitled cause, and to include in such transcript of the record the following, and no other papers and exhibits, to-wit:

(1.) Petition in Error to the Supreme Court of Oklahoma, (filed March 27, 1939);

(2.) Opinion and decision of the Supreme Court of Oklahoma, (dated October 17, 1939);

(3.) Petition for Rehearing, (filed October 27, 1939);

(4.) Journal Entry of Judgment denying Petition for Rehearing, (dated November 7, 1939);

(5.) Motion for Stay of Mandate to Permit Taking and Allowance of Appeal to the Supreme Court of the United States, (filed November 10, 1939), with acknowledgment of service thereof;

(6.) Journal Entry of Order Staying Mandate and Fixing Costs Bond, (dated November 10, 1939);

(7.) Petition for Appeal and Prayer for Reversal, (filed Dec. 4 1939) with proof of service thereof;

(8.) Assignment of Errors (filed Dec. 4 1939) with acknowledgment of service thereof;

(9.) Jurisdictional Statement, (filed Dec. 4 1939) with acknowledgment of service thereof;

[fol. 87] (10.) Order allowing appeal and costs bond, (filed Dec. 4 1939) with acknowledgment of service thereof;

(11.) Citation to appellee, (filed Dec. 4 1939), with proof of service thereof;

(12.) Costs Bond, with approval thereof and acknowledgment of service of same;

(13.) Statement directing attention of appellees to paragraph 3 of Rule 12 of the Supreme Court of the United States, (filed Dec. 4 1939), with acknowledgment of service thereof;

(14.) A full and complete transcript of the record certified to the Supreme Court of Oklahoma by the trial Judge of the District Court of Oklahoma County, under date of Oct. 27 1938 and filed in the Supreme Court of Oklahoma with Petition in Error attached, on the 27th day of March, 1939, including the following:

(a) Petition (shown at Page 2 of Case-Made);

(b) Answer of defendant (found at Page 20 of Case-Made);

(c) Stipulation of the parties, together with exhibits, (found at Page 27 of Case-Made);

(d) Journal Entry of Judgment (found at Page 52 of Case-Made);

(15.) Any order filed in this court enlarging the time for docketing this case in the Supreme Court of the United States;

(16.) This praecipe, with acknowledgment of service thereof;

(17.) The full, complete and accurate index of the record required by this praecipe.

(18.) Statement of Points to be Relied Upon.

Said transcript is to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 13 day of Jan. 1940.

Dated this 29th day of Nov. 1939.

E. A. Walker, Attorneys for Tradesmens National Bank of Oklahoma City, a banking corporation, Appellant. V. J. Bodovitz, of Counsel.

[fols. 88-92] Acknowledgment of Service

Service of the above and foregoing praecipe and receipt of a copy thereof is accepted and acknowledged this 29 day of Nov., 1939.

C. D. Stinchecum, Attorney for Oklahoma Tax Commission.

[fol. 93] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 94] In Supreme Court of the United States

Statement of Points to be Relied Upon—Filed December 16, 1939

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

(1.) The statute of the State of Oklahoma, to-wit: 1935 Income Tax Law and more particularly Sections 16, 17, 18

and 19 thereof, is unconstitutional and void as repugnant to paragraph 1 of Section 10 of Article 1 of the Constitution in that it impairs the obligation of existing contracts of the appellant.

(2.) The aforesaid Act of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of its liberty and property without due process of law.

(3.) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of the equal protection of the laws.

(4.) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 5219, Revised [fol. 95] Statutes of the United States.

(5.) The said statute of the State of Oklahoma is unconstitutional and repugnant in that it was enacted for the express and specific purpose of taxing income from tax-exempt obligations of the United States, as the predecessor statute, being enacted in 1933, is exactly similar to the 1935 Act except that the 1933 Act exempted such income of obligations of the United States from taxation, while the 1935 Act had as its only change the inclusion of such income as being taxable.

(6.) The said statutes of 1935, by virtue of which the State Tax Commission assessed 6% taxes against the income from instrumentalities of the United States Government, is discriminatory as against national banks because the statute specifically provides that the taxes on Federal instrumentalities can be levied only against banks and not other corporations or individuals. Other corporations owning Government bonds under the statutes are allowed to deduct from their gross income all income derived from the interest on obligations of the United States and its possessions, or on securities issued under authority of an Act of Congress, the interest from said securities being specifically nontaxable; but Sections 8 (8), (c) and 18 (b) of said legislative enactment specifically provides that this bank and all banks in Oklahoma are denied this exemption and are compelled to pay a tax upon the following:

"Interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free."

(7.) As a result of the Oklahoma Statutes of 1935 cited supra, this bank and all other banks are compelled to pay taxes over and above and in addition to the tax imposed on [fol. 96] any and all other individuals or corporations in this State, including individuals or corporations engaged in competition with said bank, such as building and loan associations, partnerships and persons who are engaged in the business of loaning money and in addition to it being illegal by virtue of Section 8 of Article I of the Fourteenth Amendment of the Constitution of the United States, it is contrary to Section 5219 of the Revised Statutes of the United States, and in addition to this, it is violative of sections 7 and 15 of Article II, and section 5 of Article X of the Constitution of Oklahoma, and section 12370, Oklahoma Statutes 1931.

(8.) The Supreme Court of the State of Oklahoma in the companion case known as the First National Bank of El Reno v. Oklahoma Tax Commission reported in 90 Pac. (2d) 438, specifically holds that the tax undertaken to be levied by the State of Oklahoma in 1935 is not an income tax as stated in said Act, but is an excise tax, or privilege tax, and, therefore, is a legal tax and the holding of this Court is in direct violation of another statute enacted and enforced in the State of Oklahoma under the heading "Oklahoma Corporation License Law", which section lists the character of business in the State of Oklahoma which is subject to an excise tax and in the second paragraph of said Act is this provision:

"Provided, however, that this act shall not apply to national banks, state banks, trust companies, building and loan associations, insurance companies, including surety and bond companies, nor any corporation not organized for profit."

If the State of Oklahoma Supreme Court is correct in holding that the tax attempted to be levied by the State is an excise tax, then said decision is violative of the statutes of [fol. 97] Oklahoma in effect at the time of said decision, and in holding that the tax can be levied against the income from Federal securities it deprives this appellant of a right to

which he is entitled by virtue of the contract in the face of the bonds involved in this decision.

E. A. Walker, Attorneys for Appellant. V. J. Bodovitz, of Counsel.

C. D. Stinchecum, Attorney of Record for the appellee, hereby acknowledges due and timely service of the above Statement of Points to be Relied Upon, and designation of the parts of the record to be printed, and agrees that the said designation includes all parts of the record material and necessary to the consideration of the case and hereby expressly waives all right to file a counter designation of parts of the record to be printed.

Dated this 29th day of November, 1939.

C. D. Stinchecum.

[fol. 98] In Supreme Court of the United States

Designation of Parts of Record to be Printed—Filed December 16, 1939

Comes now the appellant in the above entitled cause and hereby makes its designation of parts of the record to be printed, as follows:

(1.) Petition filed in the District Court of Oklahoma County, State of Oklahoma, in Cause No. 93,837, entitled Tradesmens National Bank of Oklahoma City, a banking corporation, Plaintiff, vs. The Oklahoma Tax Commission, Defendant.

(2.) Answer filed by the defendant The Oklahoma Tax Commission in said District Court of Oklahoma County.

(3.) Stipulation of parties filed in said cause in said District Court.

(4.) Journal Entry of Judgment of said District Court of Oklahoma County.

(5.) Petition in Error filed in the Supreme Court of the State of Oklahoma, being Cause No. 29,155.

(6.) Opinion of the Supreme Court of Oklahoma in Cause No. 29,155.

(7.) Petition for Rehearing.

(8.) Journal Entry of Judgment denying Petition for Rehearing.

(9.) Motion for Stay of Mandate to Permit Taking Allowance of Appeal to the Supreme Court of the United States, with acknowledgment of service thereof.

(10.) Journal Entry of Order Staying Mandate and Fixing Costs Bond.

(11.) Petition for Appeal and Prayer for Reversal, with proof of service thereof.

[fol. 99] (12.) Assignment of Errors, with acknowledgment of service thereof.

(13.) Jurisdictional Statement, together with excerpts of the Oklahoma Income Tax Laws of 1933 and 1935 attached thereto.

(14.) Order Allowing Appeal, with acknowledgment of service.

(15.) Citation to Appellee, with proof of service thereof.

(16.) Costs Bond with approval thereof and acknowledgment of service.

(17.) Statement directing attention of appellees to Paragraph 3 of Rule 12 of the Supreme Court of the United States, with acknowledgment of service thereof.

(18.) Praecipe for Transcript of Record, with acknowledgment of service thereof.

(19.) Statement of Points to be Relied Upon, with acknowledgment of service and waiver.

(20.) Designation of Parts of Record to be Printed, with acknowledgment of service and waiver.

E. A. Walker, Attorneys for Appellant. V. J. Bodovitz, of Counsel.

A. F. Herr, Attorney of Record for the appellee, hereby acknowledges due and timely service of the above Designation of Parts of Record to be Printed, and agrees that said designation includes all the parts of the record material and necessary to the consideration of the case and hereby ex-

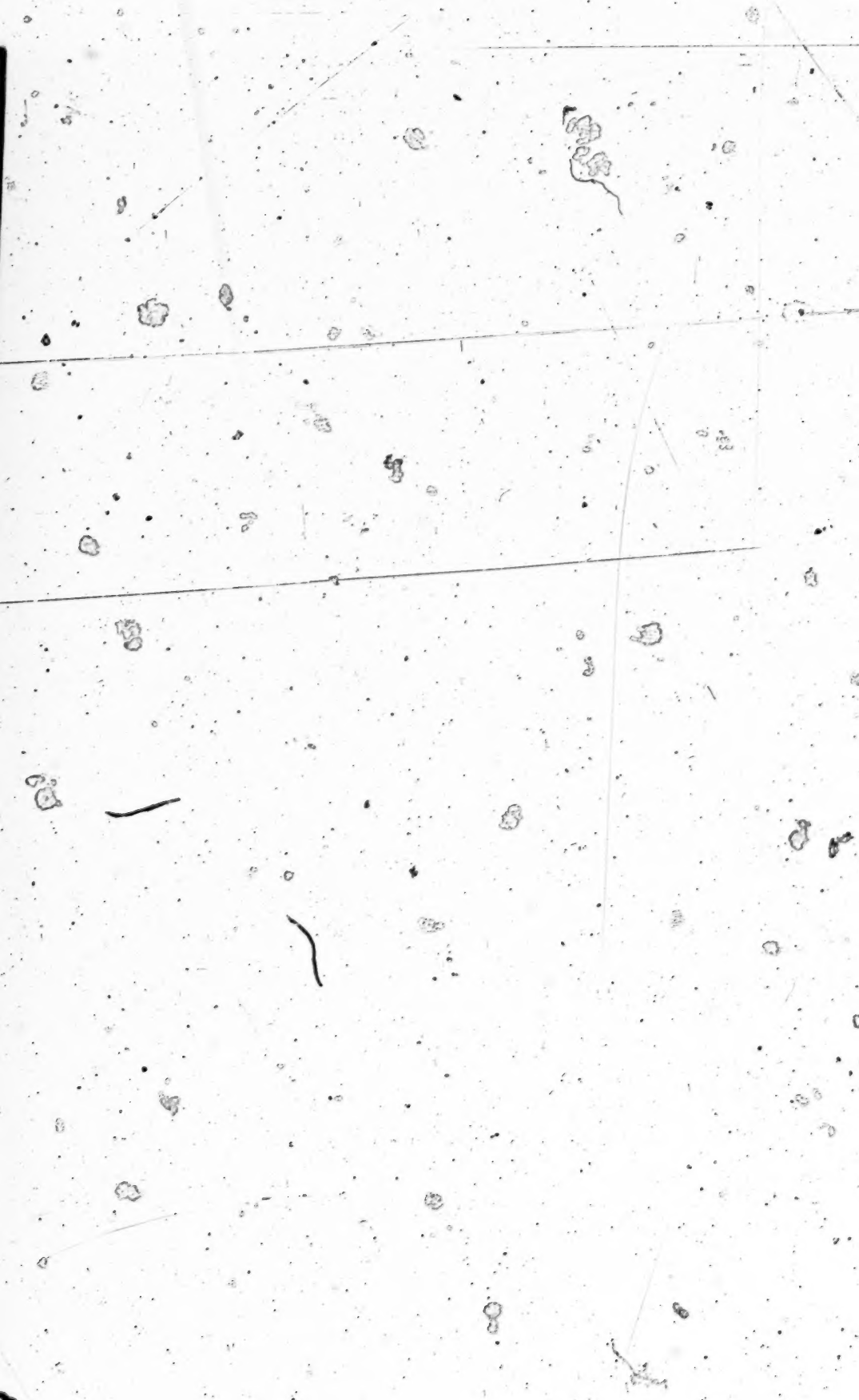
pressly waives all right to file a counter designation of parts of the record to be printed.

Dated this 13 day of December, 1939.

A. F. Herr.

[fol. 100] [File endorsement omitted]

Endorsed on Cover: File No. 44,003. Oklahoma, Supreme Court, Term No. 596. Tradesmens National Bank of Oklahoma City, Appellant, vs. The Oklahoma Tax Commission. Filed December 16, 1939. Term No. 596 O. T. 1939.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 596

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY,

Appellant,

vs.

THE OKLAHOMA TAX COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

STATEMENT AS TO JURISDICTION

E. A. WALKER,
Counsel for Appellant.

V. J. BODOVITZ,
Of Counsel.

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Judicial Code, Section 237, as amended (28 U. S. C. A. 344) and as further amended 45 Stat. 54, Act of January 31, 1928, c. 14, Sec. 1 (28 U. S. C. A. 861a) and 45 Stat. 466, Act of April 26, 1928, c. 440 (28 U. S. C. A. 861b) 3

Oklahoma Income Tax Law for 1933, being Chapter 195, Session Laws 1933, page 426 3

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 596

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, A BANKING CORPORATION,

Appellant,

vs.

THE OKLAHOMA TAX COMMISSION,

Appellee.

JURISDICTIONAL STATEMENT

This is an appeal from the final judgment of the Supreme Court of Oklahoma in Cause No. 29,155, on the docket of said court, entitled:

"Tradesmens National Bank of Oklahoma City, a banking corporation, Appellant and Plaintiff in Error,

vs.

The Oklahoma Tax Commission, Appellee and Defendant in Error."

Said cause was an appeal from the District Court of Oklahoma County, Oklahoma, to review the judgment and order of that court. The case as filed in the District Court

sought the recovery of certain income taxes paid to The Oklahoma Tax Commission by the Tradesmens National Bank of Oklahoma City under the 1935 Income Tax Law which were paid under protest.

Appellant prosecuted its appeal in the Supreme Court of Oklahoma to review said judgment, the case being docketed as Cause No. 29,155, was briefed and was first decided by the Court on October 17, 1939 (R. 3). The opinion is not yet officially published and a copy is attached hereto as Appendix "A". A companion case is *First National Bank of El Reno* v. *The Oklahoma Tax Commission*, reported in 90 Pac. (2d) 438.

Appellant seasonably filed its petition for rehearing (R. 6), which was by the Supreme Court of Oklahoma entertained, considered and on November 7, 1939, denied (R. 9), and said court thereby rendered its final judgment in this cause. A copy of appellant's petition in error containing assignment of error in the Supreme Court of Oklahoma is attached hereto as Appendix "B".

By said judgment the Supreme Court of Oklahoma affirmed as against appellant's claim is denial of due process and equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States; and further, appellant's claim of denial of due process and equal protection of the laws as being in violation of Article 1, Section 10, Constitution of the United States; and, further, appellant's claim of denial of due process and equal protection of the laws because of violation of the inherent power of Congress to borrow money on the credit of the United States; and, further, as being in violation of the Acts of Congress declaring such bonds and securities and the income therefrom to be non-taxable; and, further, as being in violation of Section 5219, Revised Statutes of the United States.

Statutory Provision Giving This Court Jurisdiction

This Court has jurisdiction of this cause under Judicial Code, Section 237, as amended (28 U. S. C. A. 344), which provides:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the Court from which it was removed by the writ,"

and 45 Stat. 54, January 31, 1928, c. 14, Sec. 1, 28 U. S. C. A. 861a and 45 Stat. 466, April 26, 1928, c. 440, 28 U. S. C. A. 861b, substituting appeal for the writ of error.

Statute, Validity of Which is Involved

The Statute of Oklahoma, the validity of which is involved, is Article 6, Chapter 66, Acts of the Fifteenth Legislature, being Session Laws of Oklahoma, 1935, page 286. The pertinent provisions are hereto attached as Appendix "C". Also Oklahoma Income Tax Law for 1933, being Chapter 195, Session Laws 1933, page 426. The pertinent provisions are hereto attached as Appendix "D".

Date of Judgment

The date of the judgment sought to be reviewed was November 7, 1939, at which time the Supreme Court of

Oklahoma, having judicially considered appellant's Petition for Rehearing, denied the same, whereupon the original decision of October 17, 1939, became finally effective.

Date of Application for Appeal to the Supreme Court of the United States

Petition for appeal to this court was presented to the Chief Justice of the Supreme Court of Oklahoma on December 4, 1939.

Nature of the Case and Rulings of the Court Bring the Case Within the Jurisdictional Provisions, and are Substantial

The District Court of Oklahoma County and the Supreme Court of Oklahoma, by affirming said cause on appeal, denied recovery to the taxpayer Tradesmens National Bank of Oklahoma City, a banking corporation, who had paid its 1936 State Income Tax under protest and filed suit within the statutory time for its recovery. The taxpayer in paying said taxes protested same for the reason that said Act under which said taxes were paid was in violation of the Constitution of the United States as being (a) a denial of due process of law; (b) a denial of equal protection of the law; (c) a denial of the inherent constitutional power of Congress to borrow money on the credit of the United States; (d) a violation of Section 5219, Revised Statutes of the United States; (e) the upholding of a State Act which impaired the obligations of a contract; and (f) the upholding of a State Act which was enacted solely to tax income from obligations of the United States.

These rulings authorize an appeal: *Miller* v. *Schoene*, 48 S. Ct. 246, 72 L. Ed. 568; *People of State of New York* v. *Zimmerman*, 48 S. Ct. 61, 278 U. S. 63, 73 L. Ed. 568.

The Federal Questions Involved are Substantial

The Supreme Court by its decision denied appellant's claim of discrimination and appellant's claim of denial of

due process and equal protection of laws. For the year 1936 appellant paid over $6,000 in State income taxes under protest and will be required to pay for each succeeding year, as will all other national banks in Oklahoma, until this particular statute shall have been finally construed by this Court.

(1) The decision upheld the 1935 Oklahoma Income Tax Law, and particularly Sections 16, 17, 18 and 19 thereof, which taxed interest upon obligations of the United States, which enactment superseded the 1933 Income Tax Law of the State of Oklahoma and which provisions were identical as dealing with taxation of national banks except that Section 18 of the 1933 law specifically excluded income from obligations of the United States.

(2) The decision upholding the Act was in derogation of the power of Congress to borrow money on the credit of the United States. *MacAllen* v. *Commonwealth of Massachusetts*, 279 U. S. 620, 73 L. Ed. 874, 49 S. Ct. 432, 65 A. L. R. 866 (1929); *Miller* v. *City of Milwaukee*, 272 U. S. 713, 47 S. Ct. 280, 71 L. Ed. 487; *Northwestern Mutual Life Ins. Co.* v. *State of Wisconsin*, 247 U. S. 132, 38 S. Ct. 444, 62 L. Ed. 1025.

(3) Said decision, by upholding the statute, denied appellant due process and equal protection of laws under the Fourteenth Amendment to the Constitution of the United States. *Aberdeen Savings & Loan Association* v. *Chase*, 289 Pac. 536 (Wash.).

(4) The decision sustains the 1935 Oklahoma Income Tax Law which is in derogation of the letter and spirit of Section 5219, Revised Statutes of the United States. *Aberdeen Savings & Loan Association* v. *Chase*, 289 Pac. 536; *Bank of Fairfield* v. *Spokane Co.*, 22 Pac. (2d) 646 (Wash.).

(5) The decision of the Supreme Court affirming the judgment sustained an Act which impaired the obligations of a contract. *MacAllen* v. *Commonwealth of Massachusetts*, 279 U. S. 620, 73 L. Ed. 874, 49 S. Ct. 432; *District of Columbia* v. *Riggs National Bank*, 30 Fed. (2d) 873 (1929).

Manner and Time of Presenting Federal Questions to Oklahoma Tax Commission, District Court and Supreme Court of Oklahoma.

(A) At the time the taxes were paid under protest by the appellant, the letter of protest accompanying the check in payment therefor raised the question as to said Act of the Legislature being in violation of the United States Constitution (Page 2, Case-Made).

(B) The petition filed in the District Court of Oklahoma County within thirty days after the payment of said taxes under protest specifically raised the Federal questions (Page 2, Case-Made). At page 3 of the petition it is alleged that the said tax "was illegal, erroneous, excessive and void; * * * that the said provisions of the said Act, to-wit, section 8 (8), (c) and section 18 (b) * * * are unconstitutional and void and violate both the Constitution of the United States and * * * that said discriminatory provisions violate Section 10 of Article I, and the Fourteenth Amendment of the Constitution of the United States in that the said legislative enactment deprives the plaintiff bank of its property without due process of law, and of the equal protection of the laws * * * and further, that it violates the legal contract existing between the Federal Government and the holders of Federal Government securities under which the income from said securities and said securities themselves are tax exempt, such provision being a part of the statutes authorizing the

issuance of said securities and of the securities themselves. • • • Plaintiff further states that the said quoted portions of the said Act as set forth in paragraph (a) above are illegal and void in that they violate Section 5219, United States Revised Statutes as amended, relating to national banking associations."

The answer filed in the District Court of Oklahoma County by the appellee specifically denied the allegations that the imposition of such taxes deprived appellant of its property without due process of law or that it denied appellant the equal protection of the laws, and specifically denied that said statute violated the provisions of the Federal Constitution (Page 22, Case-Made).

The District Court of Oklahoma County, being the trial court, with the petition and answer before it, with the above quotations therein and with the stipulation of facts as found at page 27 of the Case-Made, denied relief to the plaintiff and necessarily had to pass on the issues as raised by the petition and answer.

(C) The Federal questions were raised in the appellant's petition in error at the time the appeal was lodged in the Supreme Court of Oklahoma (Appendix B). The portions of said petition in error wherein these matters were raised are listed as follows:

> "3. Said Court erred in not holding the so-called income tax on income of plaintiff-in-error derived from Federal securities, Federal Reserve Bank stock, Federal Land Bank bonds, Joint Stock Land Bank bonds and Territory of Hawaii bonds, unconstitutional and as a violation of both the United States and Oklahoma Constitutions.
>
> • • • • • • •
>
> "5. Said Court erred in not holding said purported Income Tax Law in violation of both the Constitution

of the United States and the Constitution of Oklahoma in that it is discriminatory and not a uniform taxation.

"6. Said Court erred in not holding said purported Income Tax Law in violation of the Constitution of the United States and the Constitution of Oklahoma in that it is a taxation of Federal instrumentalities.

"7. Said Court erred in not holding that said Act is unconstitutional under both the Constitution of the United States and Oklahoma as being discriminatory under Section 5219, United States Statutes."

(D) The brief filed by appellant in the Supreme Court of Oklahoma specifically raised the Federal questions. The Supreme Court of Oklahoma in its Opinion specifically mentioned the Federal questions raised by the appellant, as shown in Appendix "A". The Court said:

"The tax levied by the Act involved herein is not an income tax, but is a franchise tax measured by net income. The levy of such tax is specifically authorized by Section 5219, U. S. Revised Statutes, Title 12, Section 548 U. S. C. A. The language used in the title is amply sufficient to designate the levy of a tax of this character."

The Court further said:

"The other propositions relied upon for reversal were presented to this court in the case of First National Bank of El Reno *v.* Oklahoma Tax Commission, 90 P. (2d) 438, and were determined contrary to the contentions of plaintiff."

In the *First National Bank of El Reno* v. *Oklahoma Tax Commission*, 90 Pac. (2d) 438, at page 440 the Court showed that the Federal questions were raised and that they were passed upon. The Court used the following language:

"The constitutionality of these provisions of the Act is challenged by plaintiff on the following grounds:

"1. As impairing the obligation of contracts.

"2. As an attempt to impose a tax upon income derived from securities and instrumentalities of the United States.

"3. As depriving plaintiff of its property without due process of law and denying the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

"4. As an impairment and in derogation of the power of Congress to borrow money on the credit of the United States."

The Supreme Court of Oklahoma treated each and all of the above and foregoing questions as properly raised under the Oklahoma practice, and necessarily decided them and each of them against appellant.

Respectfully submitted,

E. A. WALKER,
Attorney for Appellant.

V. J. BODOVITZ,
Of Counsel.

EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 29,155,

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, a banking Corporation, Plaintiff in Error,

v.

THE OKLAHOMA TAX COMMISSION, Defendant in Error

Syllabus

1. Article 6, Chapter 66, Session Laws 1935, is not violative of section 57, Article 5 of the Constitution insofar as said Act levies an annual tax on National banking associations "according to or measured by" the net income of such associations.

2. Section 16, Article 6, Chapter 66, p. 297, Session Laws 1935, 68 Okl. St. Ann. para. 887, providing for the taxation of national banking associations, which levies a tax "according to or measured by", the net income of such associations, constitutes a valid and binding exercise of the taxing power of the State notwithstanding further provisions of the Act, providing that such income shall include "the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income of which is tax free.

3. The state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unjust discrimination is inflicted upon them.

Appeal from the District Court of Oklahoma County

Hon. Lucius Babcock, Judge

AFFIRMED

Spiers & Bodovitz, of Oklahoma City, for Plaintiff in Error.

Dick Jones, A. L. Herr, C. D. Stinchecum, Rowe Cook, of Oklahoma City, for Defendant in Error.

OSBORN, J.:

This action was instituted in the District Court of Oklahoma County by the Tradesmen's National Bank, hereinafter referred to as plaintiff, against the Oklahoma Tax Commission, hereinafter referred to as defendant, wherein it was sought to recover certain taxes paid by plaintiff under protest. The cause was tried to the court, a judgment was entered in favor of defendant and plaintiff has appealed.

The tax involved herein was assessed against plaintiff under the provisions of sec. 16, art. 6, chap. 66, Session Laws 1935. The income against which the tax was levied consisted of dividends on stock owned by plaintiff in the Federal Reserve Bank and interest received by plaintiff on bonds or securities issued by the United States Government.

For reversal plaintiff submits the following propositions:

"1. House Bill No. 192, Article 6, Chapter 66, Session Laws of 1935, is unconstitutional as being violative of Article 5, Section 57, of the Oklahoma Constitution.

"2. The 1935 Oklahoma Income Tax Law is unconstitutional as being discriminatory under the Constitution of the State of Oklahoma.

"3. The 1935 Oklahoma Income Tax Law is unconstitutional as being violative of the Fourteenth Amendment to the United States Constitution.

"4. The 1935 Oklahoma Income Tax Law is unconstitutional as being a direct tax on the income from obligations and securities of the United States.

"5. The 1935 Oklahoma Income Tax Law violates the letter and spirit of Section 5219 Revised Statutes of the United States."

Under plaintiff's first proposition it is argued that the Act levies an income tax against National Banking Associations which purpose and intent is not disclosed in its title. The applicable portion of the title is as follows:

"• • • an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by Method Four (4) of Section 5219, U. S. Revised Statutes as Amended, relating to National Banking Associations, • • •"

The tax levied by the Act involved herein is not an income tax, but is a franchise tax measured by net income. The levy of such tax is specifically authorized by Section 5219, U. S. Revised Statutes, Title 12, Section 548 U. S. C. A. The language used in the title is amply sufficient to designate the levy of a tax of this character.

The other propositions relied upon for reversal were presented to this court in the case of *First National Bank of El Reno* v. *Oklahoma Tax Commission*, 90 P. (2d) 438, and were determined contrary to the contentions of plaintiff. It appears that all of the arguments presented by plaintiff were before the Court in that case. Therein it was held:

"Section 16, Article 6, Chapter 66, p. 297, Session Laws 1935, 68 Okl. St. Ann. para. 887, providing for the taxation of national banking associations, which levies a tax 'according to or measured by', the net income of such associations, constitutes a valid and binding exercise of the taxing power of the State notwithstanding further provisions of the Act, providing that such income shall include 'the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income of which is tax free.

"The state is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unjust discrimination is inflicted upon them."

It would serve no useful purpose to reiterate the discussion contained in that opinion.

The judgment is affirmed.

Welch, V. C. J., Riley Corn, Gibson, Hurst, Davison and Danner, JJ.: Concur.

Bayless, C. J.: Absent.

EXHIBIT "B"

[Stamp:] Filed in Supreme Court of Oklahoma, Mar. 27, 1939. Andy Payne, Clerk

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 29155

TRADESMEN'S NATIONAL BANK, OF OKLAHOMA CITY, a Banking Corporation, *Plaintiff-in-Error*,

vs.

THE OKLAHOMA TAX COMMISSION, *Defendant-in-Error*

Petition in Error

The said Tradesmen's National Bank, of Oklahoma City, a banking corporation, plaintiff-in-error, complains of said defendant-in-error in that the said The Oklahoma Tax Commission, at the —— term of the District Court of Oklahoma County, State of Oklahoma, recovered a judgment by the consideration of said Court denying relief and recovery of the plaintiff-in-error in a certain action then pending in said Court wherein the said Tradesmen's National Bank, of Oklahoma City, a banking corporation, was plaintiff and The Oklahoma Tax Commission was defendant. The original case-made, duly signed, attested and filed, is hereto attached, marked "Exhibit A" and made a part of this Petition in Error; and the said Tradesmen's National Bank, of Oklahoma City, a banking corporation, avers that there is error in the said record and proceedings in this, to-wit:

1. Said Court erred in overruling the motion of the plaintiff for a new trial.

2. Said Court erred in not rendering judgment for the plaintiff-in-error.

3. Said Court erred in not holding the so-called income tax on income of plaintiff-in-error derived from Federal securities, Federal Reserve Bank stock, Federal Land Bank bonds, Joint Stock Land Bank bonds and Territory of

Hawaii bonds, unconstitutional and as a violation of both the United States and Oklahoma Constitutions.

(4.) Said Court erred in holding that said purported Oklahoma Income Tax Law is not a violation of the Oklahoma Constitution as regards its title.

(5.) Said Court erred in not holding said purported Income Tax Law in violation of both the Constitution of the United States and the Constitution of Oklahoma in that it is discriminatory and not a uniform taxation.

(6.) Said Court erred in not holding said purported Income Tax Law in violation of the Constitution of the United States and the Constitution of Oklahoma in that it is a taxation of Federal instrumentalities.

(7.) Said Court erred in not holding that said Act is unconstitutional under both the Constitution of the United States and Oklahoma as being discriminatory under Section 5219, United States Statutes.

Wherefore, plaintiff-in-error prays that said judgment so rendered may be reversed, set aside and held for naught; and that a judgment may be rendered in favor of the plaintiff-in-error and against defendant-in-error for the relief and judgment sought, and the plaintiff-in-error be restored to all rights that it has lost by the rendition of such judgment; and for such other relief as to the Court may seem just.

TRADESMEN'S NATIONAL BANK, OF OKLAHOMA CITY, a Banking Corporation,
By SPIERS & BODEVITZ,
Its Attorneys.

EXHIBIT "C"

ARTICLE 6

Income Tax

AN ACT relating to and providing for an annual tax upon the net income of individuals, corporations, estates and

trusts, and an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by Method Four (4) of Section 5219, U. S. Revised Statutes as Amended, relating to National Banking Associations, and complying therewith, to provide revenues for general governmental functions of the State; providing for the disposition of revenues arising thereunder; prescribing the rates of such taxes; providing for specific deductions and exemptions from said tax; providing for the computation and collection of such taxes by the Oklahoma Tax Commission and empowering same to enforce said Act and to prescribe and enforce rules and regulations in relation thereto; defining the powers of said Commission in the collection of additional and delinquent taxes; making certain violations of Acts unlawful and prescribing penalties therefor; requiring income tax returns to be made by taxpayers and prescribing how same shall be prepared and filed; making said taxes and penalties a lien on taxpayers' property and providing for the enforcement thereof; requiring persons paying income to individuals to report same to said Commission; providing, in certain cases, for withholding income taxes at the source and the method of payment thereof; providing a legal remedy for aggrieved taxpayers; repealing Chapter 195, Oklahoma Session Laws 1933, and all Acts or parts of Acts in conflict with this Act, except as same apply to accrued income taxes and penalties thereon and to the collection thereof; providing that if a portion of Act is held invalid same will not affect other portions thereof and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. Oklahoma Income Tax Law of 1935.

The Title of this Act shall be: "Oklahoma Income Tax Law of 1935."

* * * * * * *

Section 8. Gross Income Defined—Exemptions—Interstate Business.

* * * * * * *

(b) Does not include the following items which shall be exempt from taxation under this Act:

. . . . . .

(4.) Interest upon the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax-free, except as hereinafter provided;

. . . . . .

Section 16. National Banking Associations.

(a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall annually, pay to this State, a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

Six (6%) per centum of the amount of the net income as herein provided.

(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed.

(c) Any tax levied under this Section shall accrue on the first day after the close of the taxable year, as that term is defined in Section 4 (h), and the basis of the tax, according to, or measured by, the net income, shall include the entire net income from all sources to be determined by subtracting from the gross income, as defined in Section 18, the deductions allowed in Section 9.

Provided, however, that no deductions shall be allowed to any national bank or trust company for debts ascertained to be worthless and charged off within the taxable year, as defined by Section 9 (f) hereof, unless said debts actually be charged off either under the order or direction, or with the approval of the examining officials having charge of the supervision or examination of said bank or trust company.

* * * * * * *

Section 18. Gross Income Defined—Interstate Business.

(a) The term "Gross Income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits, or income received as compensation for services, as interest, rents, commissions, brokerage or other fees or otherwise received in carrying on such business, including all dividends received on stocks and all interest received from state, municipal or other bonds or other securities, and gains, profits and income derived from any source whatsoever.

(b) The term "Gross income" shall also include the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free.

(c) If the gross income is derived from business carried on both within and without this State, gross income means that proportion thereof which is derived from business carried on within this State, to be allocated and determined under rules and regulations to be prescribed by the Commission.

EXHIBIT "D"

Chapter 195

INCOME TAX

House Bill No. 1

AN ACT providing for relief from ad valorem taxation by levying an annual tax upon the net income of individuals,

corporations, estates and trusts; by levying an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by method four (4) of Section 5219, U. S. Revised Statutes as amended, relating to National Banking Associations, and complying therewith; providing for the disposition of the revenues arising hereunder; prescribing the rates of such taxes herein levied and defining terms; providing for specific exemptions to individual taxpayers; exempting religious, charitable, eleemosynary, educational, benevolent, fraternal and other corporations or organizations not organized for profit; providing for the computation and collection of such taxes by the Oklahoma Tax Commission and empowering said Commission to enforce this Act and to prescribe and enforce rules and regulations in relation thereto; defining the powers of said Commission in the collection of additional and delinquent taxes and prescribing penalties for the violation of this Act; requiring returns by taxpayers and prescribing how the same shall be prepared and filed; making such taxes and penalties a lien on taxpayers' property, and for the enforcement thereof; requiring persons paying income to individuals to report same to said Commission; providing, in certain cases for withholding such taxes at the source and providing method of payment; providing a legal remedy for aggrieved taxpayers; declaring the provisions of this Act to be severable; repealing Sections 12370, 12371 and all of Article 15, Chapter 66, Oklahoma Statutes, 1931, except as to accrued taxes and penalties and the collection and enforcement thereof, and repealing House Bill Number One (1), passed by the Fourteenth Legislature of Oklahoma, 1933, approved April 8, 1933, and all other laws in conflict herewith; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Title of Act.

Section 1. The title of this Act shall be: "Oklahoma Income Tax Law."

. . . . . .

Gross Income—Definition of—Inclusions and Exclusions—Exemptions.

Section 8. The term "gross income," except as otherwise provided in paragraph (c) of this Section,

. . . . . .

(b) Does not include the following items which shall be exempt from taxation under this Act:

. . . . . .

(4) Interest upon the obligations of the United States or its possession, or upon securities issued under authority of an Act of Congress, the income from which is fax-free;

National Banks—Tax in Lieu of Normal Tax—Percentums.

Section 16. (a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall, annually, pay to the State a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

(1) One percentum (1%) of the first $2,000 of the amount of net income in excess of the credit against net income provided in Section 11(a);

(2) Two percentum (2%) of the next $2,000 of such excess amount;

(3) Three percentum (3%) of the next $3,000 of such excess amount;

(4) Four percentum (4%) of the next $3,000 of such excess amount; and

(5) Five percentum of the next $4,000.00 of such excess amount; and

(6) Six percentum of the remainder of such excess amount.

(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; Provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed.

. . . . . .

Gross Income—What Included In.

Section 18. (a) The term "gross income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees or otherwise, received in carrying on such business, including all dividends received on stocks and all interest received from State, municipal or other bonds or other securities, and gains, profits and income derived from any source whatsoever. Provided that the interest upon the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax free, shall not be included in such gross income.

(b) If the gross income is derived from business carried on both within and without the State, gross income means that portion thereof which is derived from business carried on within the State, to be allocated and determined under rules and regulations to be prescribed by the Commission.

. . . . . .

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 596

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, A BANKING CORPORATION,

Appellant,

vs.

THE OKLAHOMA TAX COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OF APPELLANT.

E. A. WALKER,
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V. J. BODOVITZ,
Of Counsel.

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Tradesmens National Bank v. *Oklahoma Tax Commission*, 95 Pac. (2d) 121 (not yet officially reported) 1

STATUTES CITED.

Constitution of the United States:
Article I, Sec. 10 4
Fourteenth Amendment, Sec. 1 4
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Constitution of the State of Oklahoma:
Article II, Sec. 7 4
15 4
Article X, Sec. 5 4
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SUPREME COURT OF THE UNITED STATES

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No. 596

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, A BANKING CORPORATION,

Appellant,

vs.

THE OKLAHOMA TAX COMMISSION.

APPEAL FROM THE SUPREME COURT OF OKLAHOMA.

BRIEF OF APPELLANT TRADESMENS NATIONAL BANK OF OKLAHOMA CITY, A BANKING CORPORATION.

This is an appeal from the decision of the Oklahoma Supreme Court, which opinion is reported in 95 Pac. (2d) 121 (not yet officially reported in the Oklahoma Reports). The opinion refers to a companion case, *First National Bank of El Reno* v. *The Oklahoma Tax Commission*, reported in 90 Pac. (2d) 438, 185 Okla. 98.

The grounds on which the jurisdiction of this Court is invoked is under Judicial Code, Section 237, as Amended, 28 U. S. C. A. 344. The Legislature of the State of Okla-

homa enacted Article 6, Chapter 66, Acts of the Fifteenth Legislature, being Session Laws of 1935, page 286, which Act, known as the 1935 State Income Tax Law, sought to impose taxes on the income of national banks, which income expressly included income from bonds of the United States Government and its subsidiaries, which bonds were expressly made non-taxable as to principal and income under the provisions of Congress authorizing them. The Bank paid such income taxes under protest and filed suit for their recovery in the manner and time provided for in said Act, and based its right to recover said taxes so paid under protest on the ground that said taxes so imposed by said Act, which Act was in violation of the Constitution of the United States, as being:

(a) A denial of equal protection of the law;

(b) A denial of due process of law;

(c) A denial of the inherent constitutional power of Congress to borrow money on the credit of the United States;

(d) A violation of Section 5219, Revised Statutes of the United States;

(e) The upholding of a State Act which impaired the obligation of a contract;

(f) The upholding of a State Act which was enacted solely to tax income from obligations of the United States which by previous Act prior to the enactment of 1935, said obligations were free from such taxation.

Assigned Errors Intended to be Urged.

(1) The statute of the State of Oklahoma, to-wit: 1935 Income Tax Law and more particularly Sections 16, 17, 18 and 19 thereof, is unconstitutional and void as repugnant to paragraph 1 of Section 10 of Article I of the Constitution in

that it impairs the obligation of existing contracts of the appellant.

(2) The aforesaid Act of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of its liberty and property without due process of law.

(3) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of the equal protection of the laws.

(4) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 5219, Revised Statutes of the United States.

(5) The said statute of the State of Oklahoma is unconstitutional and repugnant in that it was enacted for the express and specific purpose of taxing income from tax-exempt obligations of the United States, as the predecessor statute, being enacted in 1933, is exactly similar to the 1935 Act except that the 1933 Act exempted such income of obligations of the United States from taxation, while the 1935 Act had as its only change the inclusion of such income as being taxable.

(6) The said statute of 1935, by virtue of which the State Tax Commission assessed 6% taxes against the income from instrumentalities of the United States Government, is discriminatory as against national banks because the statute specifically provides that the taxes on Federal instrumentalities can be levied only against banks and not other corporations or individuals. Other corporations owning Government bonds under the statutes are allowed to deduct from their gross income all income derived from the interest on

obligations of the United States and its possessions, or on securities issued under authority of an Act of Congress, the interest from said securities being specifically non-taxable; but Sections 8 (8), (c) and 18 (b) of said legislative enactment specifically provides that this bank and all banks in Oklahoma are denied this exemption and are compelled to pay a tax upon the following:

> "Interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free."

(7) As a result of the Oklahoma Statutes of 1935, cited *supra*, this bank and all other banks are compelled to pay taxes over and above and in addition to the tax imposed on any and all other idividuals or corporations in this State, including individuals or corporations engaged in competition with said bank, such as building and loan associations, partnerships and persons who are engaged in the business of loaning money and in addition to it being illegal by virtue of Section 8 of Article 1 of the Fourteenth Amendment of the Constitution of the United States, it is contrary to Section 5219 of the Revised Statutes of the United States; and in addition to this, it is violative of Sections 7 and 15 of Article II, and Section 5 of Article X of the Constitution of Oklahoma, and Section 12370, Oklahoma Statutes 1931.

ARGUMENT.

(1) The statute of the State of Oklahoma, to-wit: 1935 Income Tax Law, and more particularly Sections 16, 17, 18 and 19 thereof, is unconstitutional and void as repugnant to paragraph 1 of Section 10 of Article 1 of the Constitution of the United States in that it impairs the obligation of existing contracts of the appellant.

The Act of Congress authorizing the issuance of the bonds, the income of which is involved herein, has the fol-

lowing language, or an almost duplication thereof, and this statement is further reproduced on the bonds themselves:

> "This Bond is issued under the authority of and in accordance with the provisions of the Federal Farm Mortgage Corporation Act approved January 31, 1934, as amended, which provides that Bonds issued thereunder shall be deemed and held to be instrumentalities of the Government of the United States, and that as such they and the income derived therefrom shall be exempt from Federal, State, Municipal, and local taxation (except surtaxes, estate, inheritance and gift taxes)."

The Act of the Oklahoma Legislature as shown in Appendix A hereto, imposes a tax directly on the income from these obligations.

This bank and all other purchasers acquired these bonds under the express terms, conditions and limitations as provided in the Act of Congress authorizing them and as reproduced on the bonds themselves. This was a contractual obligation and the Act of the Oklahoma Legislature purports to change, alter and vary the terms of the contract between the holder and owner of these bonds and the authority issuing them. This cannot be done, as such Act impairs the obligations of a contract.

> "A state statute (Mass. Gen. Laws, Chap. 63, as amended) which purports to impose an excise tax upon domestic business corporations for the privilege of doing business, measured by their net income derived from business carried on within the state, and which provides that such net income shall include 'all interest and dividends * * * except dividends on shares of stock of corporations organized under the laws of the commonwealth and dividends in liquidation paid from capital,' operates to impose a tax upon county and municipal bonds, and is, therefore, void as impairing the obli-

gation of the statutory contract of the state by which such bonds are made exempt from state taxation."

MacAllen Company v. *Commonwealth of Massachusetts*, 65 A. L. R. 866, 279 U. S. 620, 73 L. Ed. 874, 49 Sup. Ct. Rep. 432.

This same matter was in issue and directly passed upon by the Court of Appeals of the District of Columbia in the case of *District of Columbia* v. *Riggs National Bank*, 30 F. (2d) 873 (1929). An Act of Congress provided that every national bank in the District of Columbia should pay six per cent on gross earnings, and further provided that the tax levied should be in lieu of all other taxes upon personal property. That is the same provision in the 1935 Oklahoma Income Tax Law. The bank paid on gross earnings, but refused to pay six per cent on that portion of gross earnings which was received as interest on United States Government bonds and other evidences of public debt, which by the terms of the law under which they were issued were made tax exempt. We have the same state of facts here. The court relied upon the case of *Northwestern Mutual Life Insurance Co.* v. *Wisconsin, supra*, and stated:

"The controlling point in the decision of the Court in this case is that a license, franchise, or privilege tax, measured by gross income, gross earnings or gross receipts, which are partly derived from United States bonds, amounts to taxation on the bonds themselves, and it was for this reason that the court held that the state exceeded its power and that the tax was to that extent void. The District tax law is not different from the law of Wisconsin, as set out in the opinion of the court in the second Wisconsin case. There, as here, Wisconsin contended that it was a privilege, franchise, or license tax. The Supreme Court, at page 139 (148 S. Ct. 56), referring to its decision in the former Wisconsin case, said: 'Speaking there of this same statute we did declare: "The tax in question is, therefore, not only one for the privilege of doing life insurance busi-

ness within the state, but is in effect a commutation tax, levied by the state in place of all other taxation upon the personal property of the company in the State of Wisconsin."

In the fourth syllabus the Court said:

"Act April 24, 1917, § 1, 31 U. S. C. A. § 746, and other acts exempting both principal and interest of bonds issued thereunder from all taxation, except estate or inheritance taxes, imposed by the United States, its possessions, or any state or local taxing authority, apply to the District of Columbia, as well as the states, and place a limitation on Congress, as well as state Legislatures."

(2) The aforesaid Act of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of its liberty and property without due process of law.

(3) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it deprives the appellant of the equal protection of the laws.

It will be noted from a reading of the Oklahoma Income Tax Law of 1935 shown in Appendix A hereof, that individuals and other corporations in the State of Oklahoma are exempt from the terms of said State Income Tax Law insofar as income from obligations of the United States is concerned. In other words, competitive individuals and corporations are treated in one manner and national banks in another. This is patently discriminatory and a denial of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

"In determining constitutionality of State tax law, court must consider, not only legislative recitals, but true operation on basis of practical results.

"Thus when the state law declares that the tax is imposed 'for the privilege of exercising corporate franchise within state,' such recital is not conclusive in determining whether the statute offends against the Constitution, but the court must also consider the true operation and effect of the law, which must be dealt with on the basis of the practical results which follow its operation.

"Tax measured by 'net income,' denominated privilege tax on financial corporation, held in effect tax on net income as regards equal protection clause (Laws 1929, p. 380; Const. U. S. Amend. 14 § 1).

"Laws 1929, p. 380, which imposes a tax on banks and financial corporations measured by their 'net income,' as defined by the act, recites that the tax is imposed 'for the privilege of exercising its corporate franchise within this state.' However, despite the legislative declaration, the practical operation of the law is to lay a tax on the net income of corporations. It is not peculiarly applicable to corporations as taxes on capital stock or franchises. It is levied on, and is to be considered and tested as, a tax on net income.

"State tax measured by net income, including income from national tax-exempt obligations, held invalid as contravening federal laws (Laws 1929, p. 380).

"Laws 1929, p. 380, imposed on banks and financial corporations a tax measured by their net income, but made no provision that income derived from federal government securities, which by the laws of the United States are exempt from state taxation, should be excluded in arriving at the net income which was to form the basis for the tax.

"State law imposing tax, measured by net income on banks and financial corporations and not on individuals, held unconstitutional as denial of equal protection (Laws 1929, p. 380; Const. U. S. Amend. 14 § 1).

"Laws 1929, p. 380, imposed a tax measured by net income, as defined by the act, on national banks, banks

and financial corporations, which term was defined as including savings and loan associations. As to banks other than national banking associations, and as to financial corporations, the act declared that the tax was imposed 'for the privilege of exercising * * * corporate franchise within this state,' but, despite this legislative declaration, the practical operation of the statute was a tax on net income which, since it was not levied on individuals, or businesses other than banks and financial corporations, injuriously affected savings and loan associations in competition with individuals and others not subject to the tax."

Aberdeen Savings & Loan Association v. *Chase*, 289 Pac. 536 (Wash.).

(4) The said statute of the State of Oklahoma is unconstitutional and repugnant in that it was enacted for the express and specific purpose of taxing income from tax-exempt obligations of the United States, as the predecessor statute, being enacted in 1933, is exactly similar to the 1935 Act except that the 1933 Act exempted such income of obligations of the United States from taxation, while the 1935 Act had as its only change the inclusion of such income as being taxable.

By referring to the terms of the 1933 Income Tax Law of Oklahoma, shown as Appendix "B" hereof, it will be noted that under its terms, income from obligations of the United States was expressly exempted from the terms and provisions of that income tax law. The Income Tax Law of 1935, shown as Appendix "A" hereof, and being enacted for the express purpose of amending and supplanting the terms and provisions as regards national banks, changed the terms and provisions of the 1933 law in one, and only one, particular, as regards income to national banks. It expressly includes as taxable income to national banks such income received by national banks from obligations of the

United States. Such income was expressly exempted in the 1933 law and thus the sole and only purpose for the enactment under the 1935 law was to tax income which was heretofore non-taxable. *McAllen* v. *Commonwealth of Massachusetts,* 279 U. S. 620, 73 L. Ed. 874, 49 S. Ct. 432.

"In the consideration of such legislation, the controlling principle, constantly to be borne in mind, is that the state cannot tax the instrumentalities or bonds of the United States, or, what is the same thing, the income derived therefrom, directly or indirectly; that is to say, it cannot tax *them* in any form. Words which, literally considered, import a tax upon something else, —a tax, for example, as here, upon the privilege of doing business measured in part by the amount of non-taxable interest received,—may nevertheless, be adjudged to lay a tax upon the interest, if that purpose be fairly inferable from a consideration of the history, the surrounding circumstances, or the statute itself considered in all its parts. See Home Sav. Bank *v.* Des. Moines, 205 U. S. 503, 510, 521, 51 L. Ed. 901, 906, 911, 27 Sup. Ct. Rep. 571.

"On the one hand, the state is at liberty to tax a corporation with respect to the doing of its business. On the other hand, the state cannot tax the income of the corporation derived from nontaxable securities. It necessarily follows that the legislature may not, by an artful use of words, deprive this court of its authority to look beyond the words to the real legislative purpose. And the power and the duty of the court to do so is of great practical importance. For when the aim of the legislature is simply to tax the former, it is less likely to impose an injurious burden upon the latter than when the aim is directed primarily against the latter. See Galveston, H. & S. A. R. Co. *v.* Texas, *supra* (210 U. S. p. 227, 52 L. Ed. 1037, 28 Sup. Ct. Rep. 638)."

"In the present case, it appears that the original statute exempted from consideration as a part of the measure of the tax all interest upon the nontaxable

securities. The amended act now in force has the effect of repealing this original provision and imposing a burden upon the securities from which, by express language, they had theretofore been free. This was a distinct change of policy on the part of the commonwealth, adopted, as though it had been so declared in precise words, for the very purpose of subjecting these securities pro tanta to the burden of the tax."

MacAllen Company v. *Commonwealth of Massachusetts*, 65 A. L. R. 866, 873, 874, 279 U. S. 620, 73 L. Ed. 874, 49 Sup. Ct. Rep. 432.

(5) The effect of the decision upholding the Act of the 1935 Legislature of the State of Oklahoma is derogatory of the power of Congress to borrow money on the credit of the United States. It is elementary that under our dual system of government, that the United States, acting through Congress, necessarily has the power and authority to borrow money on its credit. That is essential for the ability of both the Federal Government and the State Government to properly function; and any restriction on this power necessarily is unconstitutional.

"A State tax, however small, on securities of the national government or on interest derived therefrom, is invalid as interfering or tending to interfere with power of general government to borrow money on credit of the United States.

"Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly.

"A tax ostensibly on corporate privilege of doing business, measured in part by amount of nontaxable interest received, may be adjudged to lay a tax on the interest, if that purpose be fairly inferable from a consideration of the statute, its history, and surrounding circumstances.

"The distinction pointed out in these cases is between an attempt to tax the property or income as such and to measure a legitimate tax upon the privileges involved in the use thereof. It is implicit in all that the thing taxed in form was in fact and reality the subject aimed at, and that any burden put upon the nontaxable subject by its use as a measure of value was fortuitous and incidental.

"The aphorism of Chief Justice Marshall in McCulloch *v.* Maryland, 4 Wheat. 316, 431 (4 L. Ed. 579), that 'The power to tax involves the power to destroy', has frequently been reiterated by this Court. The principle, of course, is important only where the tax is sought to be imposed upon a nontaxable subject; or, as said in Knowlton *v.* Moore, 178 U. S. 41, 60 S. Ct. 747, 755 (44 L. Ed. 969,) ' * * * the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subject which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the tax authority as a subject which is beyond its scope'. Not only may the power to tax be exercised oppressively, but for one government—state or national—to lay a tax upon the instrumentalities or securities of the other is derogatory to the latter's dignity, subversive to its powers and repugnant to its paramount authority. See California *v.* Central P. R. R. Co., 127 U. S. 1, 41 S. Ct. 1073 (32 L. Ed. 150).

"The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a non-taxable subject at once suggests the probability that it was the latter rather than the former that the law-maker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that ' * * * what cannot be done directly because of constitutional restrictions' cannot be accomplished indirectly by legislation which accomplishes the same result. * * * Constitutional provisions whether oper-

ating by way of grant or limitation are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation.' Fairbank *v.* United States, 181 U. S. 283, 294, 300, 21 S. Ct. 648, 653 (45 L. Ed. 862)."

McAllen v. *Commonwealth of Massachusetts*, 279 U. S. 620, 73 L. Ed. 874, 49 S. Ct. 432.

"State law, taxing corporate dividends, in proportion to which corporate income was not assessed, obviously passed for purpose of imposing a tax on United States bonds, held unconstitutional.

"It is a familiar principle that conduct which in usual situations the law protects may become unlawful when part of a scheme to reach a prohibited result. If the avowed purpose of self-evident operation of a statute is to follow the bonds of the United States and to make up for its inability to reach them directly by indirectly achieving the same result, the statute must fail even if but for its purpose or special operation it would be perfectly good.

"A tax very well might be upheld as against any causal effect it may have upon the bonds of the United States when passed with a different intent and not aimed at them, but it becomes a more serious attack upon their immunity when they are its obvious aims. In such a case the court must consider the public welfare rather than the artifices contrived for private convenience and must look at the facts. See Home Insurance Co. of New York *v.* New York, 134 U. S. 594, 598, 10 S. Ct. 593, 33 L. Ed. 1025; Gillespie *v.* Oklahoma, 257 U. S. 501, 505, 42 S. Ct. 171, 66 L. Ed. 338; United States Grain Corporation *v.* Phillips, 261 U. S. 106, 113, 43 S. Ct. 283, 67 L. Ed. 552."

Miller v. *City of Milwaukee*, 272 U. S. 713, 47 S. Ct. 280, 71 L. Ed. 487.

"St. Wis. 1923, No. 76, 34 (St. 1919, No. 1211-35; St. 1917, No. 41.32), insofar as it imposes charges against life insurance companies of 3 percent on gross income from all sources, except rents of land on which it paid taxes and premiums collected, held invalid to that extent, as imposing direct charge on interest derived from United States bonds.

"Bonds of United States are beyond taxing power of States, neither can valid tax be laid on income arising therefrom.

"Counsel for the state maintain that the effect of section 76.34 is to impose upon domestic insurance companies a privilege or franchise tax, and not one on property or income; that no charge is laid upon bonds of the United States, but the fee exacted is for granted privileges, including exemption from personal property taxation and right to do business; that the state may require domestic corporations to pay privilege, franchise or license taxes measured by gross income, although partly derived from United States bonds; and that in no proper sense can the challenged tax be regarded as one directly imposed upon gross income.

"They also suggest that this court has interpreted the statute and pointed out its real nature. Northwestern Mutual Life Ins. Co. *v.* State of Wisconsin, 247 U. S. 132, 137, 38 S. Ct. 444, 62 L. Ed. 1025. Speaking there of this same statute we did declare:

"The tax in question is, therefore, not only one for the privilege of doing life insurance business within the State, but is in effect a commutation tax, levied by the State in place of all other taxation upon the personal property of the company in the State of Wisconsin.

"But no question was then raised concerning taxation of income derived from United States bonds. The point now presented was not involved.

"It cannot be denied (and denial is not attempted) that bonds of the United States are beyond the taxing power of the States. Home Savings Bank *v.* City of Des Moines, 205 U. S. 503, 509, 27 S. Ct. 571, 51 L. Ed.

901; Farmers & Merchants Bank *v.* Minnesota, 232 U. S. 516, 34 S. Ct. 354, 54 L. Ed. 706; and First National Bank *v.* Anderson, 269 U. S. 341, 347, 46 S. Ct. 135, 70 L. Ed. 295. Certainly since Gillespie *v.* Oklahoma, 257 U. S. 501, 505, 42 S. Ct. 171, 66 L. Ed. 338, it has been the settled doctrine here that where the principal is absolutely immune, no valid tax can be laid upon income arising therefrom. To tax this would amount practically to laying a burden on the exempted principal. Accordingly if the challenged act, whatever called really imposes a direct charge upon interest derived from United States bonds, it is pro tanto void.

"The fundamental question often presented in cases similar to these, is whether by the true construction of the statute the assessment must be regarded as a tax upon property or one on privileges or franchise of the corporation. Society for Savings *v.* Coite, 6 Wall. 594, 18 L. Ed. 897; Home Insurance Co. *v.* New York, 134 U. S. 594, 10 S. Ct. 593, 33 L. Ed. 1025.

"Here the statute undertook to impose a charge of 3 per cent upon every dollar of interest received by the company from United States bonds. So much, in any event, the State took from these very receipts. This amounts, we think, to an imposition upon the bonds themselves and goes beyond the power of the State."

Northwestern Mutual Life Ins. Co. v. *State of Wisconsin*, 275 U. S. 136, 72 L. Ed. 202, 148 S. Ct. 55.

(6) The aforesaid statute of the State of Oklahoma is unconstitutional and repugnant to Section 5219, Revised Statutes of the United States.

The letter and spirit of Section 5219 Revised Statutes of the United States seeks to place national banks on an equality and parity with competitive businesses. It permits taxation under certain terms and conditions, but it is not intended thereby to permit the States to discriminate against national banks, nor is it intended by Congress to permit

States to levy direct taxes against these banking institutions; and no State may do indirectly what it cannot do directly. The State of Oklahoma passed an income tax law and now seeks to sustain its authority to tax national banks thereunder by asserting that the tax so imposed thereby is an excise, privilege or franchise tax, which we submit is contrary to the letter and spirit of Revised Statutes 5219.

"In determining constitutionality of State tax law, court must consider, not only legislative recitals, but true operation on basis of practical results.

"Thus when the State law declares that the tax is imposed 'for the privilege of exercising corporate franchise within State', such recital is not conclusive in determining whether the statute offends against the Constitution, but the court must also consider the true operation and effect of the law, which must be dealt with on the basis of the practical results which follow its operation.

"Tax measured by 'net income', denominated privilege tax on financial corporation, held in effect tax on net income as regards equal protection clause (Laws 1929, p. 380; Const. U. S. Amend 14 § 1).

"Laws 1929, p. 380, which imposes a tax on banks and financial corporations measured by their 'net income' as defined by the act, recites that the tax is imposed 'for the privilege of exercising its corporate franchise within this State'. However, despite the legislative declaration, the practical operation of the law is to lay a tax on the net income of corporations. It is not peculiarly applicable to corporations as are taxes on capital stock or franchises. It is levied on, and is to be considered and tested as, a tax on net income.

"State tax measured by net income, including income from national tax-exempt obligations, held invalid as contravening federal laws (Laws 1929 p. 380).

"Laws 1929, p. 380, imposed on banks and financial corporations a tax measured by their net income, but made no provision that income derived from federal

government securities, which by the laws of the United States are exempt from state taxation, should be excluded in arriving at net income which was to form the basis for the tax.

"State law imposing tax, measured by net income on banks and financial corporations and not on individuals, held unconstitutional as denial of equal protection (Laws 1929, p. 380; Const. U. S. Amend. 14 § 1).

"Laws 1929, p. 380, imposed a tax measured by net income, as defined by the act, on national banks, banks and financial corporations, which term was defined as including savings and loan associations. As to banks other than national banking associations, and as to financial corporations, the act declared that the tax was imposed 'for the — of exercising * * * corporate franchise within this state', but, despite this legislative declaration, the practical operation of the statute was a tax on net income which, since it was not levied on individuals, or businesses other than banks and financial corporations, injuriously affected savings and loan associations in competition with individuals and others not subject to the tax."

Aberdeen Savings & Loan Association v. *Chase*, 289 Pac. 536 (Wash.).

See also *Bank of Fairfield* v. *Spokane County*, 22 Pac. (2d) 646 (1933), (Wash.)

The appellee necessarily relies upon three cases as sustaining the right to impose this tax. The first of these cases is *Flint* v. *Stone-Tracy Company* (1910), 220 U. S. 107, 55 L. Ed. 389, 31 S. Ct. 342, wherein this court held that a Federal corporation tax in the nature of an excise tax upon the privilege of doing business in a corporate capacity equivalent to one per cent of the entire net income over a certain period was held not to be invalid because it did not except from its operation the income from municipal bonds and other non-taxable securities * * * since such was

not a tax upon the property as such but a tax upon the privileges involved in the use of such property.

Of this case, this court commented in *MacAllen* v. *Massachusetts, supra,* as follows:

> "The court below predicates its decision upon a series of decisions of which Flint *v.* Stone Tracy Co., 220 U. S. 107, 163-165, 55 L. Ed. 389, 418, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312, is the extreme example, holding that a tax lawfully imposed upon the exercise of corporate privileges within the taxing power may be measured by income from the property of the corporation although a part of such income is derived from nontaxable property. See also Home Ins. Co. *v.* New York, 134 U. S. 594, 33 L. Ed. 1025, 10 Sup. Ct. Rep. 593; Society for Savings *v.* Coite, 6 Wall. 594, 18 L. Ed. 897; Provident Inst. *v.* Massachusetts, 6 Wall. 611, 18 L. Ed. 907. The distinction pointed out in these cases is between an attempt to tax the property or income as such and to measure a legitimate tax upon the privileges involved in the use thereof. It is implicit in all that the thing taxed in form was in fact and reality the subject aimed at, and that any burden put upon the nontaxable subject by its use as a measure of value was fortuitous and incidental."

The second case is that of *Educational Films Corporation* v. *Ward,* 282 U. S. 379, 75 L. Ed. 400, 51 S. Ct. 170, 71 A. L. R. 1226 (1931), decided in 1931, wherein this Court upheld an excise tax imposed upon corporations measured by their net income, which net income included income from copyrights.

In the *MacAllen* case the majority opinion was written by Mr. Justice Sutherland, with a dissenting opinion written by Mr. Justice Stone. In the *Educational Film Corporation* v. *Ward* the majority opinion was written by Mr. Justice Stone and the dissenting opinion by Mr. Justice Sutherland.

The latter case did not overrule the *MacAllen* case, and

further stated that the *MacAllen* case did not overrule the *Flint* v. *Stone Tracy* case.

The last case involved in this issue is *Pacific Company* v. *Johnson*, 285 U. S. 480, 76 L. Ed. 893, 52 S. Ct. 424 (1932). This opinion was written by Mr. Justice Stone and involved a corporation franchise tax of California which imposed a tax on appellant's franchise and in determining that, included in its gross income interest derived from improvement district bonds, which were tax-exempt bonds. The court upheld such franchise tax as a privilege or excise tax; held that it was not passed for the purpose of taxing property heretofore nontaxable; held that the present case was not one of discrimination.

It will be noted that in none of the three cases were banks involved, nor was the question raised as to bonds of the United States and its instrumentalities which were specifically made tax exempt as to principal and income by the Act of Congress authorizing them. The distinction apparently is a devious one and seems to require the overcoming of three hurdles: (1) the purpose of the Legislature in enacting the taxing statute seems to be fundamental; and if in truth and in fact it is a franchise tax, it is valid; or, if it is a property tax, it is invalid; (2) the question must be answered as to whether the purpose of the Legislature was to do indirectly what it could not do directly; that is, whether the Legislature was seeking to tax something that had heretofore been nontaxable; (3) the question is raised as to whether any discrimination is involved.

We submit that the legislation of the Oklahoma Legislature in enacting the 1935 Income Tax Law falls by all three of these tests.

In the first place, it is an income tax or direct tax on the income received by the bank, and not merely a franchise tax. That for the reason that the Oklahoma statutes con-

template franchise taxes on corporations in a separate and distinct manner and not taxable under the guise of the income tax law. Furthermore, the Act specifically excepts non-banking corporations. Moreover, the tax was intended as an income tax. The Oklahoma Tax Commission, the administrative commission carrying out the terms and effects of the Act, so construed it. The Supreme Court of the State of Oklahoma construed the first income tax law passed wherein national banks came within their purview, in *Board of County Commissioners of Oklahoma County* v. *Board of Equalization*, 155 Okla. 183, 8 Pac. (2d) 732, wherein the fourth and fifth syllabi read as follows:

> "Article 7, Chap. 66, Sess. Laws 1931, became effective on April 4, 1931, which provided an exclusive method of taxing banking corporations on their net income, and repealed all laws in conflict therewith; held, that said act repealed the provisions of the Oklahoma Statutes levying a tax on shares of banking corporations and substituted therefor an income tax.
>
> "Under Section 5219, R. S. of the U. S., amended March 4, 1923, Chap. 267, 42 Stat. 1499, amended March 25, 1926, Chap. 88, 44 Stat. 223 (Vol. 2, U. S. C. A. Sec. 548), providing: 'The Legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, provided the following conditions are complied with: 1. (a) The imposition by any state of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause,' the imposing of an income tax on the next income of national banks precludes the state from levying an additional tax upon the shares of stock of national banks on an ad valorem basis."

These syllabi are written by the court and are reproduced in the body of the opinion.

Thus the Supreme Court of Oklahoma has construed these to be income taxes, and not franchise or excise taxes.

As pointed out above, and following the *MacAllen* case, which has not been overruled by this Court but, on the contrary, has been affirmed in the *Educational Films Corporation* case and in the *Pacific* v. *Johnson* case, the true purport and intent of the Legislature in changing the wording of the 1933 Income Tax Law to that found in the 1935 Income Tax Law was for the sole and only purpose of taxing income from nontaxable United States bonds.

Lastly, the Act is purely one of discrimination, both as regards bonds of the United States heretofore nontaxable, as just above set forth; as well as discriminatory against the taxpayer. Non-banking corporations by the express terms of the Income Tax Law enacted by the 1935 Session Laws are expressly excepted as regards income from nontaxable United States bonds.

We submit, therefore, that the 1935 Income Tax Law of the State of Oklahoma, insofar as it seeks to impose income taxes on income received by national banks from bonds and obligations of the United States, is unconstitutional and that said cause should be reversed. That said Act is unconstitutional and void for many reasons. It denies the equal protection of the law to the appellant for the reason that said Act is discriminatory. It discriminates against the bank in favor of other corporations in Oklahoma; likewise, it discriminates against the obligations of the United States. Said Act was passed for the sole and only purpose of to tax income from obligations of the United States, which obligations had, under prior acts, been exempted from such taxes, as the 1935 Act of the Oklahoma Legislature is a re-enactment of the 1933 Act with the only change being the inclusion of income from obligations of the United States.

Furthermore, said Act is a denial of the inherent constitutional power of Congress to borrow money on the credit of the United States, because the effect of such taxation permits the State to take all or any portion of said bonds or the income by taxation if this is permitted under the guise and manner as the Oklahoma Legislature now seeks. Furthermore, the Acts of Congress creating these obligations specifically provided that said obligations and their income should be exempt from all taxation, and this is a contract and the appellant, as the owner of such bonds, is entitled to rely thereon, and the Legislature of Oklahoma is prohibited from impairing the obligations of this contract by any subterfuge.

The only possible basis upon which the appellee may contend the law is valid is by seeking to call it a franchise or privilege tax and not as an income tax. This is contrary to the actual facts in the case and contrary to the decisions of the Supreme Court. The Legislature called it an income tax law; the administering commission, to-wit: the Oklahoma Tax Commission, denominated it an income tax law; Oklahoma has a special law with reference to franchise taxes of corporations, and banks are not included therein. Furthermore, the Supreme Court of the State of Oklahoma, in construing the predecessor Act, specifically denominated it an income tax. We submit that the Act should be declared unconstitutional and the case reversed.

E. A. WALKER,
Counsel for Appellant.

V. J. BODOVITZ,
Of Counsel.

APPENDIX "A".

Article 6.

Income Tax.

AN ACT relating to and providing for an annual tax upon the net income of individuals, corporations, estates and trusts, and an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by Method Four (4) of Section 5219, U. S. Revised Statutes as Amended, relating to National Banking Associations, and complying therewith, to provide revenues for general governmental functions of the State; providing for the disposition of revenues arising thereunder; prescribing the rates of such taxes; providing for specific deductions and exemptions from said tax; providing for the computation and collection of such taxes by the Oklahoma Tax Commission and empowering same to enforce said Act and to prescribe and enforce rules and regulations in relation thereto; defining the powers of said Commission in the collection of additional and delinquent taxes; making certain violations of Acts unlawful and prescribing penalties therefor; requiring income tax returns to be made by taxpayers and prescribing how same shall be prepared and filed; making said taxes and penalties a lien on taxpayers' property and providing for the enforcement thereof; requiring persons paying income to individuals to report same to said Commission; providing, in certain cases, for withholding income taxes at the source and the method of payment thereof; providing a legal remedy for aggrieved taxpayers; repealing Chapter 195, Oklahoma Session Laws 1933, and all Acts or parts of Acts in conflict with this Act, except as same apply to accrued income taxes and penalties thereon and to the collection thereof; providing that if a portion of Act is held invalid same will not affect other portions thereof and declaring an emergency.

Be It Enacted by the People of the State of Oklahoma:

SECTION 1. *Oklahoma Income Tax Law of* 1935.

The Title of this Act shall be: "Oklahoma Income Tax Law of 1935."

. . . . . .

SECTION 8. *Gross Income Defined—Exemptions—Interstate Business.*

. . . . . .

(b) Does not include the following items which shall be exempt from taxation under this Act:

. . . . . .

(4.) Interest upon the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax-free, except as hereinafter provided:

. . . . . .

SECTION 16. *National Banking Associations.*

(a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall annually, pay to this State, a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

Six (6%) per centum of the amount of the net income as herein provided.

(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed.

(c) Any tax levied under this Section shall accrue on the first day after the close of the taxable year, as that term is defined in Section 4 (h), and the basis of the tax, according to, or measured by, the net income, shall include the entire net income from all sources to be determined by subtracting from the gross income, as defined in Section 18, the deductions allowed in Section 9.

Provided, however, that no deductions shall be allowed to any national bank or trust company for debts ascertained to be worthless and charged off within the taxable year, as defined by Section 9 (f) hereof, unless said debts actually be charged off either under the order or direction, or with the approval of the examining officials having charge of the supervision or examination of said bank or trust company.

* * * * * * *

SECTION 18. *Gross Income Defined—Interstate Business.*

(a) The term "Gross Income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits, or income received as compensation for services, as interest, rents, commissions, brokerage or other fees or otherwise received in carrying on such business, including all dividends received on stocks and all interest received from state, municipal or other bonds or other securities, and gains, profits and income derived from any source whatsoever.

(b) The term "Gross income" shall also include the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free.

(c) If the gross income is derived from business carried on both within and without this State, gross income means that proportion thereof which is derived from business carried on within this State, to be allocated and determined under rules and regulations to be prescribed by the Commission.

APPENDIX "B".

Chapter 195

Income Tax

House Bill No. 1

An Act providing for relief from *ad valorem* taxation by levying an annual tax upon the net income of individuals, corporations, estates and trusts; by levying an annual tax on National Banking Associations, State Banks and Trust Companies, according to or measured by their net incomes authorized by method four (4) of Section 5219, U. S. Revised Statutes as amended, relating to National Banking Associations, and complying therewith; providing for the disposition of the revenues arising hereunder; prescribing the rates of such taxes herein levied and defining terms; providing for specific exemptions to individual taxpayers; exempting religious, charitable, eleemosynary, educational, benevolent, fraternal and other corporations or organizations not organized for profit; providing for the computation and collection of such taxes by the Oklahoma Tax Commission and empowering said Commission to enforce this Act and to prescribe and enforce rules and regulations in relation thereto; defining the powers of said Commission in the collection of additional and delinquent taxes and prescribing penalties for the violation of this Act; requiri. ; returns by taxpayers and prescribing how the same shall be prepared and filed; making such taxes and penalties a lien on taxpayers' property, and for the enforcement thereof; requiring persons paying income to individuals to report same to said Commission; providing, in certain cases for withholding such taxes at the source and providing method of payment; providing a legal remedy for aggrieved taxpayers; declaring the provisions of this Act to be severable; repealing Sections 12370, 12371 and all of Article 15, Chapter 66, Oklahoma Statutes, 1931, except as to accrued taxes and penalties and the collection and enforcement thereof, and repealing House Bill Number One (1), passed by the Fourteenth Legislature of Okla-

homa, 1933, approved April 8, 1933, and all other laws in conflict herewith; and declaring an emergency.

Be it Enacted by the People of the State of Oklahoma:

Title of Act.

SECTION 1. The title of this Act shall be: "Oklahoma Income Tax Law."

* * * * * * *

Gross Income—Definition of—Inclusions and Exclusions—Exemptions.

SECTION 8. The term "gross income," except as otherwise provided in paragraph (c) of this Section,

* * * * * * *

(b) Does not include the following items which shall be exempt from taxation under this Act:

* * * * * * *

(4) Interest upon the obligations of the United States or its possession, or upon securities issued under authority of an Act of Congress, the income from which is tax-free;

National Banks—Tax in Lieu of Normal Tax—Percentums.

SECTION 16. (a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall, annually, pay to the State a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

(1) One percentum (1%) of the first $2,000 of the amount of net income in excess of the credit against net income provided in Section 11(a);

(2) Two percentum (2%) of the next $2,000 of such excess amount;

(3) Three percentum (3%) of the next $3,000 of such excess amount;

(4) Four percentum (4%) of the next $3,000 of such excess amount; and

(5) Five percentum of the next $4,000.00 of such excess amount; and

(6) Six percentum of the remainder of such excess amount.

(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; Provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed.

* * * * * * *

Gross Income—What Included In.

SECTION 18. (a) The term "gross income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees or otherwise received in carrying on such business, including all dividends received on stocks and all interest received from State, municipal or other bonds or other securities, and gains, profits and income derived from any source whatsoever. Provided that the interest upon the obligations of the United States or its possessions, or upon securities issued under authority of an Act of Congress, the income from which is tax free, shall not be included in such gross income.

(b) If the gross income is derived from business carried on both within and without the State, gross income means that portion thereof which is derived from business carried on within the State, to be allocated and determined under rules and regulations to be prescribed by the Commission.

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FILED

NO. 596

In the Supreme Court of the United States

OCTOBER TERM, 1939

TRADESMENS NATIONAL BANK OF OKLAHOMA CITY,
Appellant,
VERSUS
OKLAHOMA TAX COMMISSION,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLEE

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BRIEF OF APPELLEE

PRELIMINARY STATEMENT

This is an action originally brought in the District Court of Oklahoma County, Oklahoma, by appellant, Tradesmens National Bank, against the Oklahoma Tax Commission to recover a tax assessed against it according to or measured by its net income, which tax it paid under protest. The tax was laid under Section 16, Article 6, Chapter 66, S. L. 1935.

The Act under which the tax was assessed was assailed on constitutional grounds, as set forth in appellant's brief. The trial court sustained the tax. The Supreme Court upon appeal affirmed its judgment. Appellant brings the case to this Court for review. *Tradesmens*

National Bank v. *Oklahoma Tax Commission*, 95 Pac. (2d) 121. See, also, *First National Bank of El Reno* v. *Oklahoma Tax Commission*, 185 Okla. 98, 90 Pac. (2d) 438.

ARGUMENT

(Emphasis ours.)

Appellant contends that the Act levying the tax is unconstitutional for the following reasons:

1. It impairs the obligation of a contract.

2. It discriminates against national banks and, therefore, violates the Fourteenth Amendment to the Constitution of the United States.

3. It levies a direct tax upon a governmental instrumentality and interferes with the power of Congress to borrow money on the credit of the United States and is, therefore, unconstitutional.

We shall discuss these propositions in their reverse order.

The tax herein assessed is authorized by Section 5219, U. S. Revised Statutes as amended. The assessment is, therefore, not invalid because laid against a Governmental instrumentality.

The tax in question was assessed in accordance with the provisions of Section 16, Article 6, Chapter 66, S. L. 1935. This section provides:

"(a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall annually, pay to this State, a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

"Six (6%) per centum of the amount of the net income as herein provided.

"(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed."

It is contended first that this section is invalid and unconstitutional because it assesses a direct tax against a governmental instrumentality. We concede that national banks are governmental instrumentalities. We also con-

cede that Congress has power and authority to control the manner in which the several states may tax such instrumentalities; and we also concede that no state can levy a tax against such instrumentalities except as authorized by Congress. We contend, however, that Section 5219, Revised Statutes of the United States, as amended, expressly authorizes the several states to levy a tax such as here involved.

The Act provides in part as follows (Title 12, Section 548, Federal Code Annotated):

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks; provided, that bonds, notes, or other evidence of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made

in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits; provided, however, that a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State, on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital."

It will be observed that under Section 16, *supra*, of the Oklahoma Income Tax Act, the State of Oklahoma elected to tax national banks in accordance with Method No. 4 authorized by Section 5219, U. S. Revised Statutes, *supra*. Since the Act of Congress has specifically authorized the

State to tax national banks in accordance with the method herein followed, it cannot be said that the State, in following such method, has levied a prohibited tax against a governmental instrumentality.

It has uniformly been held by this Court that a State, in levying an excise or privilege tax against corporations other than national corporations might constitutionally include in the measure thereof income derived from governmental securities.

It has been so held by the Supreme Court of the United States in the case of *Pacific Co., Ltd.*, v. *Johnson*, 285 U. S. 480. The gist of the decision is announced in the headnotes, as follows:

> "A California corporation acquired municipal bonds at a time when, by the State Constitution, they were declared to be 'free and exempt from taxation.' Subsequently, pursuant to a change in the Constitution, a statute subjected the corporation to a tax on the privilege of doing business in the State, measured by a specified percentage of its net income, in the computation of which the statute directed the inclusion of 'all interest received from federal, state, municipal or other bonds.' *Held* (assuming that the exemption was contractual and extended to the income derived from the bonds exempted):
>
> "1. That the tax immunity granted was not broad enough to secure freedom from taxation of the corporate franchise measured by the tax-exempt income, and therefore, the obligation of the bond contracts was not impaired by the tax. PP. 489-491.
>
> "2. In the absence of applicable state decisions antedating the alleged impairment of contract, the ex-

tent of the tax exemption is to be decided by the aid of generally accepted principles of construction. P. 489.

"3. Until the adoption of the constitutional amendment in 1928 (Sec. 16, Art. XIII), and of the Bank and Corporation Franchise Tax Act (Cal. Stats., Cal.) for taxing corporate franchises by the method here in question; and, until this case, no decision of any court of the State had determined whether the granted immunity extends to a tax on corporate franchises because tax-free income property is included in its measure. (p. 489.)

"4. On the other hand, long before adoption of the constitutional tax exemption, the distinction was well recognized between a tax on the privilege of exercising the corporate franchise and a tax on corporate property or income, even though the former was measured by the latter; and tax immunity of the property or income was not deemed to extend to the franchise (p. 489).

"5. Grants of immunity from taxation are strictly construed (p. 491).

"6. In as much as the tax exemption, as granted, did not extend to immunity from inclusion of the interest in the measure of a corporate franchise tax, and in as much as the State had power to use that measure in taxing the franchise, the fact that the legislature saw fit to include the interest on such bonds by express mention when its inclusion would otherwise have been implied in the general term net income, does not invalidate the tax, no discrimination being involved (pp. 491-495)."

In that case the State of California amended its constitution, providing for the levy of an excise tax on all corporations for the privilege of doing business in the State, and specifically included in the measure of the tax income derived from State, municipal and governmental securities. At the time this amendment was adopted, the California constitution specifically provided that State, municipal and government bonds should be exempted from taxation. It was first contended by the taxpayer in that case that the amendment of the constitution including in the measure of tax income derived from these sources was unconstitutional, as to bonds issued prior to the adoption of the amendment, in that such amendment impaired the obligation of the contract. It was further contended that even though the State was authorized to include in the measure the income derived from its own securities, it could not constitutionally include in the measure of such tax income derived from Federal Governmental securities.

After deciding the first proposition against the contention of the taxpayer, and in discussing the second proposition, the Court said:

> "The power of a state to levy a franchise tax measured by net property or income including tax-exempt bonds of the United States or their income was upheld by this Court in *Society for Savings* v. *Coite* (1868), 6 Wall. 594; *Provident Institution* v. *Massachusetts* (1868), 6 Wall. 611; *Home Insurance Co.* v. *New York* (1890), 134 U. S. 594. State laws taxing shareholders of national banks on the full net value of their shares, although the banks own tax-exempt federal securities,

have also been consistently upheld. *Van Allen* v. *Assessors*, 3 Wall. 573; *Peoples National Bank* v. *Board of Equalization*, 260 U. S. 702; *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103; similarly Congress may impose a tax on state banks measured by the average amount of their deposits, although deposits of state funds by state officers are included. *Manhattan Co.* v. *Blake*, 148 U. S. 412. *The rule that a tax upon a franchise, measured by net income, including that from tax-immune property, is not an infringement of the immunity, was re-examined and affirmed in Flint* v. *Stone Tracy Co.*, 220 U. S. 107, *which was accepted as authority in Macallen Co.* v. *Massachusetts*, 279 U. S. 620, and followed in *Educational Films Corp.* v. *Ward*, 282 U. S. 379.

"This distinction, so often and consistently reaffirmed, is but a recognition that the franchise, the privilege of doing business in corporate form, which is a legitimate subject of taxation, does not cease to be such because it is exercised in the acquisition and enjoyment of non-taxables. The distinction is one of substance, not of form, and has been so recently discussed in Educational Films Corp. v. Ward that it need not be elaborated here. *It suffices to say that the tax immunity extended to property qua property does not embrace a special privilege, the corporate franchise, otherwise taxable, merely because the value of the corporate property or net income is included in an equitable measure of the enjoyment of the privilege. The owner may enjoy his exempt property free of tax, but if he asks and receives from the state the benefit of a taxable privilege as the implement of that enjoyment, he must bear the burden of the tax which the state exacts as its price.*"

The cases cited in this opinion amply sustain the authority of the State, independent of Congressional authority, to include in an excise or privilege tax interest derived from Governmental securities, as against all State corporations.

It is conceded that prior to the last amendment of Section 5219, *supra*, the State could not have legally levied a tax such as here involved. It will be noticed that Section 5219 has been amended at different times. The last amendment was in 1926. Prior to that amendment the several states were obliged to select one of three methods authorized by said section by which to tax national banks. Under the 1926 amendment the Congress authorized the states to select an additional method known as "Method No. 4" by which to tax national banks. That method authorizes the states to tax national banks according to or measured by their net income, and authorizes the states, in measuring such tax, to include therein income derived from *all* sources.

It is our contention that the sole purpose of Congress in enacting said amendment was to expressly authorize states electing to tax national banks according to or measured by their net income to include in the measure thereof income derived from governmental securities. We think this contention is borne out by the discussion which took place when this amendment was before Congress for consideration, in the Committee as a Whole for the House of

Representatives. At that time, according to the Congressional Record, the following discussion was had:

Mr. McFADDEN, House Member, in addressing the Committee on the Amendment, in part, said:

"Mr. Chairman, a brief word in regard to the purpose of this amendment. The purpose of this proposed amendment to Section 5219, Revised Statutes, is to enable states that have adopted income tax methods to abandon the ad valorem taxation of the shares of national banks and apply income tax methods to national banking associations within their limits, without thereby favoring national banks and their shareholders as compared with other corporations generally and their stockholders. In other words, to make it possible for income tax states to tax national banking associations and their shareholders on complete taxing parity with other corporations and their stockholders.

"Mr. Moore of Virginia:

"Will the gentleman yield?

"Mr. McFadden:

"Yes.

"Mr. Moore of Virginia:

"Will the gentleman explain exactly what the present law is before he comes to a discussion of this amendment?

Mr. McFadden:

"Yes. Section 5219, as enacted in 1864 and substantially down to 1923, provided only one method for the taxation of national banks by the states, to-wit: the inclusion of the shares in the valuation of the personal property of the owners or holders of such shares."

Then, after discussing the history of the amendment of the act providing for additional methods of assessing national banks, under Method No. 2 and Method No. 3, Mr. McFadden continues as follows:

"The purpose of this added fourth alternative method is fully explained as follows, in Report No. 526 accompanying H. R. No. 9958; In the states which now apply the net income tax method to corporations generally denominate it as excise or franchise tax, the practice is to include income from all sources, including income from tax exempt securities, in arriving at the measure based on the net income. *Therefore, it is desirable, in order to establish complete taxing parity, to remedy any question as to the inclusion of the income from tax-exempt securities as part of the measure of the tax based on the net income of national banking associations; so that the same basis of measuring the tax according to the net income from corporations generally may be applied to national banking associations by the taxing state.*"

Congressional, Record,
Vol. 167, Part 6,
Pages 6083-6084.

Mr. WINGO, in discussing the bill, said, in part:

"Mr. Chairman, I would not have said anything at all on this matter, except some gentlemen have asked me to state in the record what I have told them privately about this bill, there is but one change that is made in existed law by this bill and that is to give the states one additional method of taxation of national banks to what they already have under existing law. That is the only change that is made. * * * The additional legislation in this bill is of a liberalizing character, both

from the standpoint of liberality of the state taking off restrictions,—I used the word 'liberality' in that sense—and the further feature that it permits the states, if they wish, to adopt a more modern method of taxation.

"Mr. Briggs:

"Will the gentleman yield for a question?

"Mr. Wingo:

"Yes.

"Mr. Briggs:

"Can the gentleman give the House any idea of what additional taxes it is estimated will be raised by the states through taxation under the additional authority which the bill carries?

"Mr. Wingo:

"Not a cent, and possibly reduce it in New York. * * * Here is the disputed point, I will say to the gentleman from Texas, under existing law there are three ways by which the state of New York, or Texas, can tax national bank stock, they can either tax the stock directly or they can tax the income of the individual shareholders, including the income that comes from the shares of stock, or you can tax the income of the association. If you do one, you cannot do the other. In other words, there are three alternative methods. The bill retains every one of the alternative methods but moves further and says that a state, if it desires, may levy a tax—that is, *not an income tax in the direct sense of the word, but really an excise tax measured by the income. In other words, the amount of the excise tax or the franchise tax, or whatever you call it will be determined by the standard that is fixed by the volume of the income from all sources.*

"Mr. Hastings:

"And that will include the other methods.

"Mr Wingo:

"That makes for alternatives. * * * Let me show you what the effect is. Here is a bank with a capital stock say of one hundred thousand dollars ($100,000). *Suppose it had more than one hundred thousand dollars ($100,000) in tax-exempt securities and you can find banks like that, you can see where the factor of doubt comes in. We meet this situation in this bill by saying you may levy a tax upon the bank that is measured by the income, and when you do that you can take the income from whatever source you please.* The Supreme Court has rendered a decision which leaves in the mind of the proponents of this bill, they say, no doubt at all that under the language of the bill, if they undertake to fix the excise tax, or the franchise tax, if they word it so, that it is measured by the income of the banks, *they can include the income that comes from tax-exempt securities. This is the only change we make in the existing law.*

"Mr. Cooper, of Wisconsin:

"Will the gentleman yield?

"Mr. Wingo:

"Yes.

"Mr. Cooper, of Wisconsin:

"Does not that involve a contradiction of terms, if not of law?

"Mr. Wingo:

"At first blush, it looks like that it is true, but let me repeat what the decision is. It is not an income tax. You are going to put a tax on the corporation doing business, or its right to do business; you can call it whatever name you wish. You are going to

say, how can we arrive at a fair and equitable measure of what that tax should be in the case of each corporation? Naturally, the basic factor is the ability to pay, is it not? That is one of the basic factors in levying a tax. Now, the state may say, in order to determine what the amount of this particular tax shall be, we will use a standard that will determine its ability to pay, the amount it shall pay, shall be the standard fixed by the volume of its income. *It is not a tax on the income, it is a tax on the corporation for doing business and the amount is measured by a yardstick called the income and that includes all income because of the ability of the bank to pay.*

"Mr. Cooper, of Wisconsin:

"Will the gentleman again yield?

"Mr. Wingo:

"Certainly.

"Mr. Cooper, of Wisconsin:

"Is not that a use of words to conceal an idea? *You are fixing a measure which includes a tax on the income of tax-exempt securities and so you are taxing tax-exempt securities.* The language is not important but the idea is.

"Mr. Wingo:

"Does the gentleman think that is a bad idea?

"Mr. Cooper, of Wisconsin:

"I am not called upon to express an opinion.

"Mr. Wingo:

"I am not criticising the gentleman.

"Mr. Cooper, of Wisconsin:

"That is not germane to the point whether it is right or not. I made the point that it was a contradiction of terms in the argument of the gentleman in explaining

this bill. He said that you fixed the measure by the total revenue *and that includes the income tax-exempt securities. If you do fix it that way, you tax tax-exempt securities.*

"Mr. Wingo:

"I have to be candid with the gentleman. I confess that the decision of the Supreme Court which arrived at the same conclusion gave me a headache and it took me considerable time to be able to comprehend it. I am quite aware of my lack of ability to express it in a way that is really satisfactory to myself. My argument is crude, even though measured by my own concept of it. It is a difficult thing to express, but I think the gentleman will get at what I am driving at; *and if he will read the decision of the Court which is referred to in this report, he will see that they have done that.*"

Congressional Record,
Volume 167—p. 6085.

Mr. STEVENSON also discussed the bill, in part, as follows:

"Mr. Stevenson:

"Now what do we do by this bill? They come to us with this proposition; allow us to use the entire income of the bank as the yardstick upon which to measure the levy of a tax on the right to do business and the entire income includes income from tax exempt securities and those that are not exempt, * * * We have written that into the law, that is what this adds to the methods of taxation. * * *

"Mr. Cooper, of Wisconsin:

"Will the gentleman permit an interruption?

"Mr. Stevenson:

"Yes.

"Mr. Cooper of Wisconsin:

"If the total income of the bank is the measure, that includes the income of the bank from tax exempt securities.

"Mr. Stevenson:

"Yes, sir, it does.

"Mr. Cooper of Wisconsin:

"Then this is the beginning of the taxing of hitherto tax exempt securities.

"Mr. Stevenson:

"The Supreme Court of the United States has held in the case of *Flint* v. *The Stone Tracy Company*, 220 U. S. 108, that that can be done; *that it is not a tax on the exempts, but is a tax on the corporation for the privilege of doing business measured by its entire income and you can embrace that in it.*

"Mr. Cooper of Wisconsin:

"If the gentleman will permit, as I said a moment ago, it occurs to me that is simply using language to obscure an idea. *You can take the entire income of the bank, including that which it receives from tax exempt securities, as the measure.*

"Mr. Stevenson:

"Yes, sir, that is what you do.

"Mr. Cooper of Wisconsin:

"And then you proceed to tax that which includes income from tax-exempt securities.

"Mr. Stevenson:

"That is correct.

"Mr. Cooper of Wisconsin:

"And the use of the word 'franchise' does not obscure it of the fact that you are attempting to tax and do tax hitherto tax-exempt securities.

"Mr. Stevenson:

"That is correct, and I am glad to hear a gentleman of such standing in this House as well as in the country, state what we all know that the Supreme Court of the United States frequently obscures ideas by language, as well as Statesmen when they are on the stump. *That is correct, but this is not the first time that it has been done. When they held that the stock was taxable although every dollar of it was invested in United States Bonds, which were expressly exempt from taxation, they held practically the same thing.*"

Congressional Record,
Vol. 167—p. 6088.

The above discussion, when the amendment here involved was before Congress, sustains our contention that the amendment was enacted for the sole purpose of permitting the states, when assessing national banks according to or measured by net income, to include in the measure of such tax income derived from governmental securities.

The tax assessed under the Act in question, as pointed out in the above discussion, is not an income tax, but is in the nature of a privilege tax assessed against national banks for the privilege of transacting business within the State of Oklahoma. Since the tax assessed was specifically authorized by Congress, it cannot be said that the assessment is invalid as being a prohibited tax against a govern-

mental instrumentality or as interfering with the power of Congress to borrow money on the credit of the United States.

The assessment as laid does not discriminate against national banks; it does not violate the Fourteenth Amendment to the Constitution of the United States.

It is contended by appellant that the assessment discriminates against national banks for the reason that the rate imposed on national banks, under the section in question, is a higher rate than assessed upon other financial corporations and higher than the highest of the rates assessed against mercantile, manufacturing and business corporations doing business within the State.

This contention is based upon the proposition that in assessing ad valorem taxes or income taxes against mercantile establishments and financial corporations, other than state banks, doing business in this State, such corporations are exempt from taxation upon governmental instrumentalities, and the income therefrom is exempt from taxation under the Income Tax Laws of the State. There is no contention that the Act discriminates in favor of state banks, nor can such contention be made, as Section 17 of the Act provides, in part:

"(a) In lieu of the tax imposed by Section Six, every bank or trust company organized under the banking laws of this State or Morris Plan Company, shall annually pay to this State for the privilege of doing business within its limits, a tax, according to, or measured

by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

"(1) Six (6%) per centum of the amount of net income as herein provided.

"(b) The tax imposed by this Section shall be exclusive and in lieu of taxes on the shares of stock or personal property of any such bank or trust company or Morris Plan Company subject to taxation under this Section, except organization fees and taxes imposed by the banking laws in the case of banks or trust companies, and except organization fees and corporation license fees in the case of Morris Plan Companies. Nothing in this Section shall be construed to exempt the real property of any such taxpayer from taxation to the same extent, according to its value, as other real property is taxed."

It is our contention that the word "rate," used in the Act of Congress above mentioned, refers to the entire burden of taxation and when so considered it cannot be said that the Act, on its face, discriminates in favor of mercantile and other financial corporations and against national banks. While it is true that such concerns are not taxable, under the Income Tax Act, upon interest derived from governmental securities, these corporations, in addition to paying an income tax, are assessed a privilege tax at the rate of One Dollar ($1.00) per Thousand upon the value of their capital stock employed in the State, and are also assessed ad valorem tax. (See stipulation, Tr. 26.)

These corporations are all assessed an income tax at a rate of six (6%) per centum upon their net income, and when this method of taxation is taken into consideration, in addition to the franchise and ad valorem tax rate assessed against them, it cannot be said that they are assessed at a lesser rate than national and state banks are assessed.

The Act of Congress does not provide that the State must adopt the same measure of taxation against mercantile and other financial corporations, in order to employ Method Number 4 authorized by Congress in assessing national banks. It is not required that the same system of taxation be employed as to mercantile and other financial corporations.

In effect, it only provides that no greater burden of taxation shall be assessed against national banks than is assessed against such other corporations.

We think this proposition is sustained by the following authorities: *Mercantile Bank* v. *New York*, 121 U. S. 138. It is there said:

"The mode of taxation adopted by the State of New York in reference to its corporations, excluding trust companies and savings banks, does not operate in such a way as to make the tax assessed upon shares of national banks at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens.

"Although trust companies created under the laws of New York are not banks in the commercial sense of the word, shares in such companies are moneyed capital in

the hands of individuals; but as these companies are taxed upon the value of their capital stock, with deductions on account of property in which it is invested either otherwise taxed or not taxable, and are additionally taxed upon their income by way of franchise tax, it does not appear that the rate of taxation thus imposed by the laws of New York is less than that upon shares in national banks."

In the case of *Covington* v. *First National Bank*, 198 U. S. 101, the following rule is announced in the last paragraph of the headnotes:

"A difference in methods in assessing shares of national banks from that of taxing state banks does not necessarily amount to a discrimination, rendering the act invalid under Sec. 5219, and justify the judicial interference of courts for the protection of the shareholder, unless it appears that the difference in method actually results in imposing a greater burden on the national banks than is imposed on other moneyed capital in the State."

In that case, in the State of Kentucky national banks were assessed upon the shares to the stockholders. State banks were assessed upon the franchise of such banks and not upon the shares of stock. It was contended by the bank in that case that the different method of assessing state banks was a discrimination against national banks and that the Act was, therefore, void. The Court held against the contention and, in so doing, said:

"As to the alleged discrimination against shareholders in national banks because the assessment of the property of state banks is upon the franchise and not upon the shares of stock, there is nothing in the bill to show that

this difference in method operates to discriminate against national bank shareholders by assessing their property at higher rates than are imposed upon capital invested in state banks. And as to the deduction of the value of real estate and other deductions allowed to state banks, the Supreme Court of Kentucky has held that all deductions allowed to state banks must be allowed in like manner in assessing the property of shareholders in national banks. *Commonwealth* v. *Citizens' Bk.*, 80 S. W. Rep. 158. Nor does the allegation that in cities of the first, second and third class state banks are assessed upon their shares for city taxation, but upon their franchise and property for state and county taxation, in the absence of averments of fact showing that thereby a heavier burden of taxation is imposed upon national than state banks in such cities, warrant judicial interference for the protection of shareholders in national banks. *Davenport Bank* v. *Davenport Bd. of Equalization*, 123 U. S. 83.

"Judgment affirmed."

In the case of *Davenport Bank* v. *Davenport Board of Equalization*, 123 U. S. 83, the following rule is announced:

"Section 5219, Rev. Stat., respecting the taxation of national banks, does not require perfect equality between state and national banks, but only that the system of taxation in a State shall not work a discrimination favorable to its own citizens and corporations and unfavorable to holders of shares in national banks.

"If a state statute creating a system of taxation does not on its face discriminate against national banks, and there is neither evidence of a legislative intent to make such discrimination, nor proof that the statute works an actual and material discrimination, there is no case for holding it to be unconstitutional."

In that case, under the laws of Iowa, stockholders in national banks were assessed upon the shares of stock held by them. State banks were assessed upon their moneyed capital. It was contended that this was a discrimination against national banks. Discussing this proposition, the Court said:

"It has never been held by this court that the States should abandon systems of taxation of their own banks, or of money in the hands of their other corporations, which they may think the most wise and efficient modes of taxing their own corporate organizations, in order to make that taxation conform to the system of taxing the national banks upon the shares of their stock in the hands of their owners. All that has ever been held to be necessary is, *that the system of state taxation of its own citizens, of its own banks, and of its own corporations shall not work a discrimination unfavorable to the holders of the shares of the national banks.* Nor does the Act of Congress require anything more than this: neither its language nor its purpose can be construed to go any further. Within these limits, the manner of assessing and collecting all taxes by the States is uncontrolled by the Act of Congress."

In the case of *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 373, the following rule is announced in the headnotes:

"The provisions in the tax law of New York, chap. 62, Laws of 1909, imposing a flat rate on shares of all banks, both state and national, without the right of exemption in case of indebtedness of the owners, does not discriminate against national banks and is not invalid under Sec. 5219, Rev. Stat. *People* v. *Weaver*, 100 U. S. 539, distinguished.

"*Mercantile Bank* v. *New York*, 121 U. S. 138, followed as to what constitutes moneyed capital within the meaning of Sec. 5219, Rev. Stat.

"*The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. Bridgeport Savings Bank* v. *Feitner*, 191 N. Y. 88, approved."

In that case the state and national banks were assessed against the stockholders on their shares of stock. Trust companies and savings banks were assessed upon their moneyed capital and were permitted to deduct indebtedness from the net value, and were also assessed franchise tax. Other individuals and individual bankers and corporations were assessed ad valorem tax, but were permitted to deduct from the fair cash value of their property their individual debts. They were assessed ad valorem tax at a greater rate than national and state banks were assessed. It was not seriously contended in that case that there was a discrimination between banks and trust companies, but it was contended that there was a discrimination against other moneyed capital not invested in banking business, for the reason that the indebtedness of a taxpayer, having invested such capital, was permitted as a deduction from the value of such capital.

The Supreme Court held that there was no discrimination and, in so doing, said:

"Respecting other moneyed capital, trust companies, by Sec. 188, are subjected to an annual franchise tax

'equal to one per centum on the amount of its capital stock, surplus and undivided profits.' The practical burden of such a tax (which of course falls eventually upon the stockholder) is presumably not materially different from the burden of a tax at the same rate imposed upon the individual stockholder on a valuation of his shares arrived at by taking into consideration the same elements of capital stock, surplus, and undivided profits. And of course the stockholder has no relief from such a franchise tax because of his individual debts. By Sec. 189, savings banks are subjected to a franchise of one per centum on the par value of the surplus and undivided earnings. These institutions are thus apparently taxed upon the basis of what they possess over and above what they owe to their depositors. The individual banker by Sections 14 to 25, is taxed at the place where his business is located upon the 'amount of capital invested in his banking business.'

"It is not insisted that this tax law discriminates against national banks or the stockholders thereof as compared particularly with individual bankers, trust companies, or savings banks. The ground of complaint is that Section 24, in providing that owners of bank stock (state or national) shall not be entitled to deduction from the taxable value of their shares because of their personal indebtedness, is contrary to the restriction contained in Sec. 5219, Rev. Stat., that the shares of national banks shall not be taxed 'at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State,' because under Section 21 of the Tax Law all persons are permitted to deduct their debts from their other taxable personal property in general, including, as is claimed, other moneyed capital.

"Plaintiff in error relies chiefly upon the decision of this court in *People* v. *Weaver*, 100 U. S. 539. That

case was in effect a review of the decision of the Court of Appeals of New York in *People* v. *Dolan,* 36 N. Y. 59. The question was as to the validity of an assessment and taxation of national bank shares in the City of Albany under the state law of April 23, 1866 (N. Y. Laws 1866, p. 1647), without deduction because of the indebtedness of the taxpayer, in view of the fact that under other laws the owners of other kinds of personal property were entitled to have the amount of their debts deducted from the valuation for the purposes of taxation. The state court in the Dolan case had justified the method adopted in taxing the bank shares, upon reasoning that assumed 'that while Congress limited the state authorities in reference to the ratio or percentage levied on the value of its shares, which could not be greater than on other moneyed capital invested in the State, it left the matter of the relative valuation of the shares and of other moneyed capital wholly to the control of state regulation.' This court held that the clause in Sec. 5219,—'that the taxation shall not be at a greater rate than is assessed upon other moneyed capital,' etc., meant that the taxation upon shares should not be greater than on other moneyed capital, taking into consideration both the rate of assessment and the valuation. In other words, that the restriction contained in the Act of Congress had to do with the actual incidence and *practical burden of the tax upon the taxpayer.*

* * * * * * * * * *

"* * * As already shown, moneyed captial is dealt with for the purpose of taxation upon lines different from those upon which the taxation of other personal property proceeds. By Sections 13 and 24 state bank shares and national bank shares are both dealt with, and they are treated alike, being assessed not upon the basis of market values, but upon a valuation determined by a consideration of the capital stock, surplus,

and undivided profits (yielding what is commonly known as 'book value') and leaving out of consideration other elements, such as good will and the like, which enter into the determination of the actual market value of such shares. On the other hand, personal property in general is by Section 21 to be assessed at its full value, which presumably means market value. Section 24, instead of subjecting the owners of bank shares to taxation at the rate locally obtaining for other personal property, imposes a 'flat rate' of one per centum upon the valuation, with the proviso, as held in the Feitner case, *supra*, that if the local rate be less than one per centum, the owners of shares in the bank have the benefit of it.

"Enough has been said to show that the decision in the Weaver case, which had to do with a tax assessed upon bank stock on the basis of the same method of valuation and the same rate of assessment as personal property in general including other moneyed capital, but without allowance for the indebtedness of the taxpayer, although such allowance was made to the owners of personal property in general, including other moneyed capital, is not to be deemed conclusive upon the present controversy, in view of the difference in the taxing laws.

* * * * * * * * *

"According to this practical test, it seems to us that the scheme adopted by the State of New York for taxing shares in national banks cannot upon this record be denounced as violative of the limitations prescribed by Section 5219, Revised Statutes. The holders of shares in state banks are subjected to precisely the same taxation, and with respect to other competitive institutions, such as trust companies, the franchise taxes imposed upon them apparently result in a substantially similar burden upon the shareholder. Nor is there any discrimination in favor of savings banks. With respect

to individual bankers, there is a difference, they being apparently subject to the local rate of taxation and entitled to the privilege of deduction for personal debts; but as they are taxable upon the amount of capital invested in the banking business, which is normally only such as remains after the deduction of debts, it is not plain that they possess any valuable privilege of reducing the tax assessment by deducting debts. Foreign bankers are separately treated, for reasons sufficiently obvious; but no criticism is made of this. If there be other forms of 'moneyed capital in the hands of individual citizens' of the State employed in a banking or quasi-banking business in competition with the national banks, and which are subjected to a more favorable rule of taxation, our attention is not called to them. Moreover, we agree with what was said by the Court of Appeals of New York in the *Feitner* case, 191 N. Y. 88, 96, that 'The State is obliged to apply the same system to the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them.' The court there took note of the fact that the flat rate of one per centum assessed upon national bank shares was more favorable to the relator than the general tax rate for the same year in the Borough of Manhattan, where the banks were located. The local rate (for the year 1901) was 2.31733 per centum. In the present case it is stipulated that the general tax rate locally applicable for the year 1908 to personal property not including bank shares, was 1.61407 per centum. There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book values' —which may be more or less favorable than the method adopted in valuing other kinds of personal property. As against the owner of bank shares who, by alleging discrimination, assumes the burden of proving it, and

who fails to show that the method of valuation is unfavorable to him, it may be assumed to be advantageous.

"Plaintiff in error contends that the statement of the New York court that 'When all things are considered, the rate, even without the privilege of deducting debts, is not greater than that applied to other moneyed capital in the hands of individual citizens of the state,' is based upon no facts of experience or investigation, and amounts to a pure surmise. We do not think it is to be so lightly treated; but, if it were, it still remains to be said that it was incumbent upon plaintiff in error to show affirmatively that the New York taxation system discriminates in fact against the holders of shares in the national banks, before calling upon the courts to overthrow it; and no such showing has been made.

"Nor can we say that the taxing scheme contravenes the limits prescribed by Section 5219, Rev. Stat., merely because in individual cases it may result that an owner of shares of national bank stock, who is indebted, may sustain a heavier tax than another, likewise indebted, who has invested his money otherwise. Such is, in effect, the objection urged by plaintiff in error to the position taken by the Court of Appeals of New York. In other words, it is insisted that Section 5219 deals with the burden of tax upon the individual shareholders, rather than upon shareholders as a class. We think this argument is sufficiently answered by reference to the language of Section 5219. The declaration is that 'the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State.' And this restriction is imposed upon a grant of authority to tax 'all the shares of National banking associations located within the state.' The language clearly prohibits discrimination against shareholders in national banks, and in favor of the shareholders of competing institutions, *but it does not*

require that the scheme of taxation shall be so arranged that the burden shall fall upon each and every shareholder alike, without distinction arising from circumstances personal to the individual.

"Judgment affirmed."

See, also, the following citation:

" 'Merely because a state statute does not provide for the taxation of shares in a corporation other than a bank, it does not follow that the shareholders of national banks are being discriminated against.' *Palmer* v. *McMahon* (1890), 193 U. S. 660, 33 L. ed. 772, 10 Sup. Ct. 324."

It is also contended by appellant that the assessment in this case is void for the reason that it is assessed at a greater rate than is other moneyed capital in the hands of individual citizens coming into competition with national banks. We do not think this contention sound. The Act of Congress authorizing states to adopt Method Number 4 in assessing national banks does not provide that the rate of assessment under such method shall be at no greater rate than other moneyed capital is assessed in the hands of individual citizens coming into competition with national banks. It simply provides that the rate of assessment should not be greater than the rate assessed against other financial corporations, and not greater than the highest rate assessed against mercantile corporations doing business within the state.

We know of no financial corporations operating in this State in competition with national banks, which it can be

said are assessed at a lesser rate than national banks. By express provision of the statute all financial corporations are required, under the Income Tax Act, to include in their gross income interest derived from Governmental securities.

Subdivision (c) of Section 7, Article 6, Chapter 66, S. L. 1935, in speaking of what shall be included in gross income, provides:

"In the cases of national banking associations, state banks, trust companies and other financial corporations, doing business in or organized under the laws of this State, the term 'gross income' includes the items of income enumerated in Section 18."

Subdivision (b) of Section 18 provides:

"The term 'gross income' shall also include the interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress, the income from which is tax free."

It is clear from these provisions of the Act that state banks, and all other financial corporations are assessed by the same method and at the same rate. The statute does not therefore, discriminate in favor of other financial corporations and against national banks. All are assessed alike. The assessment against national banks is made by direct Congressional consent and in giving such consent, it did not require that the State conform its general system of taxation to the method authorized in assessing national banks. It did not require that the State abandon its In-

come Tax Law, under which law Congress well knew that the State could not levy a tax on interest derived from Governmental securities. When Congress provided that the assessment against national banks should not be at a greater rate than is imposed by the State on other financial corporations, it meant that the rate should not be greater than is applied to such property which the State was authorized to tax.

We think this contention is sustained by the case of *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103. The gist of the decision is stated in paragraphs 4, 5 and 6 of the headnotes, as follows:

"4. In assessing shares in a national bank for taxation to the shareholders, no deduction need be made on account of securities of the United States, exempt from state taxation, which are part of the assets of the bank by which the value of the shares is measured, since the shares are property of the shareholders, distinct from the corporate assets. P. 112. *Bank of California* v. *Richardson*, 248 U. S. 476, distinguished.

"5. The restriction that taxation of national bank shares 'shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens' of the State (Rev. Stats., Sec. 5219) is to prevent discrimination against national banks in favor of state institutions or individuals engaged in similar business or investments, and applies to rules of valuation as well as to tax percentages. P. 116.

"6. This restriction, however, is not violated when the State, perforce, deducts tax-exempt securities of the United States in assessing capital employed in private banking, while taxing (as the Act of Congress allows)

the value of the shares of national banks without allowance for such tax-exempt securities owned by such banks. *Id.*"

The facts in that case were that the State of Iowa, in assessing national banks, made assessment on the individual stockholders on the value of their shares of stock. No deduction was allowed from the value of these shares on account of investments made by the bank in Governmental securities. In assessing the capital employed in private banking, that part of the capital invested in tax-exempt securities of the United States was allowed to be deducted. This, it was contended by the bank, constituted discrimination. In discussing this question, the Court said:

"The contention that the state statute subjects shares in a national bank to a higher rate of taxation than is laid on other moneyed capital in the hands of individual citizens is rested on the fact that in assessing capital employed in private banking the part invested in tax-exempt securities of the United States is deducted, while in assessing national bank shares the bank's investment in such securities is not deducted.

"The provision found in the congressional assent, that the taxation of the shares 'shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State,' has been considered by this court so many times that its purpose and meaning have come to be pretty well understood. Its main purpose is to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a business similar to that of

national banks or engaging in operations and investments of a like character; and the restriction comprehends a discrimination effected through rules for fixing valuations quite as much as one effected by using different percentages in computing taxes on fixed valuations. *People* v. *Weaver*, 100 U. S. 539, 545; *Mercantile Nat'l Bank* v. *New York*, 121 U. S. 138, 155; *Amoskeag Sav. Bank* v. *Purdy*, 231 U. S. 373, 385.

"Our concern here is not with a voluntary refusal or intentional omission on the part of the State to tax other moneyed capital of citizens as it taxes national bank shares, *but with a submission by the State to superior laws of the United States exempting a part of the other moneyed capital from state taxation. It may be helpful to state the matter in another way. National bank shares are taxable,—made so by the congressional assent. That much or little of the bank's assets consists of tax-exempt securities of the United States does not affect the taxability of the shares,—they being distinct from the corporate assets. The State taxes such shares without regard to the exempt government securities held by the bank. The capital of private bankers is taxable, save the part invested in exempt government securities. The state taxes all of that capital, save the exempt securities. They are exempt because the United States makes them so, and the State merely respects the exemption.* In what is thus done does the State discriminate against national bank shares and in favor of other moneyed capital in the sense of the restriction? The question is not new; nor can it be regarded as an open one in this court.

"In *People* v. *Commissioners*, 4 Wall. 244, the question was whether, in the presence of the restriction, a State could assess and tax to their owners shares in national banks without making any deduction on account of tax-

exempt securities of the United States held by the banks, when in taxing moneyed capital of individuals employed in competition with those banks such a deduction was made. The court gave an affirmative answer to the question, saying, p. 256:

"'The answer is, that upon a true construction of this clause of the act, the meaning and intent of the law-makers were that the rate of taxation of the shares should be the same, or not greater, *than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of the tax in the valuation of the shares should be levied than upon other moneyed capital in the hands of the citizens.*

"'This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the State, who make its laws and provide for its taxes. They can not be greater than the citizens impose upon themselves. It is known as sound policy that, in every well-regulated and enlightened state or government, certain descriptions of property, and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform.

"'*The objection is a singular one. At the time Congress enacted this rule as a limitation against discrimination, it was well known to that body that these securities in the hands of the citizen were exempt from taxation.* It had been so held by this court, and, for abundant caution, had passed into a law.

"'The argument founded on the objection, if it proves anything, proves that these securities should have been taxed in the hands of individuals to equalize the taxation; and, hence, that Congress by this clause in the proviso intended to subject them, as thus situated, to taxation; and, therefore, there was error in the deduction. *This we do not suppose is claimed. But if this is not the result of the argument, then, the other conclusion from it is, that Congress required that the commissioners should deduct the securities, and at the same time intended the deduction, if made, should operate as a violation of the rate of the tax prescribed. We dissent from both conclusions.*'"

And in the case of *Mercantile Bank* v. *New York*, 121 U. S. 149, speaking on the same question, the Court said:

"* * * In reference to this supposed inequality the court said: 'The answer is, that, upon a true construction of this clause of the act, the meaning and intent of the law-makers were, that the rate of taxation of the shares should be the same or not greater than upon the moneyed capital of the individual citizen, which is, *subject or liable to taxation.* That is, no greater proportion or percentage of tax in the valuation of the shares should be levied than *upon other moneyed taxable capital* in the hands of the citizens. This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the State, who makes its laws and provides for its taxes. They cannot be greater than the citizens impose upon themselves. It is known as sound policy that in every well-regulated and enlightened state or government, certain descriptions of property and also certain institutions, —such as churches, hospitals, academies, cemeteries,

and the like,—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform' (p. 256). *The court then proceeded to show that the exclusion, as the subject of taxation of government securities held by individuals, from their moneyed capital, was by authority of the United States, and hence it would be a contradiction to infer that Congress meant to include the same government securities as a part of that moneyed capital which it required to be taxed by the states at a rate equal to that imposed by the latter upon the shares held by individuals of national bank stock.*

"The other objections taken to the validity of the tax complained of was, that insurance companies created under the laws of the state were authorized to deduct from the amount of their capital and surplus profits, for purposes of taxation, such part as was invested in United States securities. In reference to this the court said: 'The answer is, that this clause does not refer to the rate of assessments upon insurance companies as a test by which to prevent discrimination against the shares; that is, confined to the rate of assessments upon moneyed capital in the hands of individual citizens. These institutions are not within the words or the contemplation of Congress; but even if they were, the answer we have already given to the deduction of these securities in the assessment of the property of individual citizens is equally applicable to them.' (p. 257)"

In the case of *Hoenig* v. *Huntington National Bank of Columbus*, 59 Fed. (2d) 479, in the headnotes thereof, it is said:

"1. Tax on shares of national bank cannot be held invalid because of discrimination in favor of other moneyed capital unless similarity of investment use is shown (12 U. S. C. A., Sec. 548).

"2. Building and loan associations held not in 'competition with national banks' so as to invalidate local taxes on bank stock on ground of discrimination in favor of building and loan associations (12 U. S. C. A., Sec. 548).

"Moneyed capital invested by building and loan association should not be held to come in competition with moneyed capital in national banks within Rev. Stat., Sec. 5219, as amended (12 U. S. C. A., Sec. 548), prohibiting discrimination against national banks in taxation, since loans of building and loan and (*sic*) association, as distinguished from those of national bank are of amortized type, and answer need which banks cannot satisfy.

"3. 'Competition' within statute prohibiting discriminatory taxation against national bank shares is limited to employment of moneyed capital substantially as in loan and investment features of banking, and does not apply to competition for deposits (12 U. S. C. A., Sec. 548).

"4. Finance and mortgage companies held not in 'competition with national banks' so as to invalidate local taxes on national bank shares on ground of discrimination (12 U. S. C. A., Sec. 548).

"Finance and mortgage companies should not be held to use moneyed capital in competition with moneyed capital in national banks, within Rev. St., Sec. 5219, as amended (12 U. S. C. A., Sec. 548*), since finance and mortgage companies are outgrowth of need created largely by installment selling, and not satis-

fied by national banks, and since mortgage companies engaged in procuring mortgages for insurance companies or other financial institutions not competing with national banks are acting as agencies of such other institutions.

"5. That mortgage and finance companies are permitted to deduct value of their holdings of nontaxables in making return for taxation held immaterial as showing discrimination against national banks, since competition was lacking (12 U. S. C. A., Sec. 548)."

Certiorari in the above case was denied by the United States Supreme Court, 287 U. S. 648.

The same conclusion was reached by the Supreme Court of the United States in the case of *First National Bank of Shreveport* v. *Louisiana Tax Commission*, 289 U. S. 60, in the headnotes, as follows:

"2. A state law taxing all the property of banks that make loans mainly from money of depositors, but exempting other competing moneyed capital employed in making loans mainly from money supplied otherwise than by deposits, is consistent with the equal protection clause of the Fourteenth Amendment. P. 63.

"3. To avoid a state tax on national shares under R. S., Sec. 5219, it is necessary to prove not only that the bank was authorized to engage in, but that, during the tax year, its moneys were actually and in substantial amount employed in, some line of business which was then being carried on also by other and less heavily taxed moneyed capital. So held where there was no reason to suppose that national banks were prevented from competing by the tax discrimination. P. 64.

"4. The evidence in this case does not prove that the complaining national banks were engaged in lending money on real estate mortgages, or were in competition with 'small loan' companies, so-called Morris Plan and Morgan Plan companies, or automobile finance companies, in the making of small loans and the financing of purchases of automobiles and household goods. P. 65. 175 La. 119, 142 So. 23, 28 affirmed."

In considering the question of discrimination, we call the Court's attention to the stipulation of facts (Tr. 26) wherein it is stipulated in substance that six thousand business and mercantile corporations filed corporation license tax returns for the year 1936 in the State of Oklahoma, and that only thirty-seven of said corporations owned government bonds. There is also attached to said stipulation a table, marked "Exhibit-A" (Tr. 38) showing the license tax paid by such corporations during that year; also the amount of interest received on government bonds held by them, and the amount of income tax they would have paid on such interest had they been assessed on such interest at six per cent (6%) under the Income Tax Law. This table shows that in practically every instance corporations holding government bonds paid a greater corporation license tax than they would have paid had they been assessed six per cent (6%) on the interest derived from said bonds. Under this showing it will be seen that such corporations paid a greater tax to the State of Oklahoma than they would have paid had they been assessed in accordance with the method under which national banks are assessed, and by such method only.

In addition to this, the stipulation also shows that such corporations paid an ad valorem tax on their moneyed capital. It will, therefore, be seen that such corporations paid a much greater tax than they would have paid had they been assessed in the same manner as are national banks. National banks, therefore, cannot complain.

The above authorities amply sustain our contention that the assessment here involved in no manner discriminates against national banks.

Counsel for appellant, in order to sustain their contention that the act under consideration discriminates against national banks and unlawfully assesses tax against governmental instrumentalities, rely mainly upon the case of *Macallen* v. *Massachusetts,* 279 U. S. 620. In that case the Court held that the Act of the Massachusetts Legislature, amending its franchise tax statute in which amendment it specifically included in the measure of the tax income derived from muncipal, state and governmental securities, was void. Prior to the amendment, the Franchise Tax Act expressly excluded from the measure of the tax, and expressly exempted therefrom interest derived from such securities. The Court held the Act unconstitutional for the reason, as stated by the Court, the Act showed upon its face that the amendment was made for the sole purpose of reaching governmental securities and was, for this reason, void. The Court, however, in that case recognized the general rule to be as herein stated.

In that case Massachusetts amended its statute taxing national banks, and in the amendment adopted Method

No. 4 authorized by Congress, and included in the measure of the tax income derived from governmental securities. In order to equalize taxation and to make the rate as against other corporations correspond with the rate assessed against national banks, it amended its statute. The Court held the amendment bad for the reason that under its prior statute, the State of Massachusetts specifically exempted interest derived from these bonds from the measure of the tax. Disposing of the question, the Court said:

> "It has been suggested that the object of the change was to conform the taxation of business corporations to that authorized by Congress for the taxation of national banks. Whether under recent federal statutes, states are authorized to impose a tax upon the income from United States Bonds held by national banks, we need not stop to inquire. Certainly there is no statute of the United States which undertakes to authorize a state to impose a tax upon such bonds held by other kinds of corporations And what power Congress has under the Constitution in respect to such authorization we need not now determine. It is clear that authority, even if given, to impose a tax on federal bonds in the case of national banks does not include, by implication or otherwise, the authority to impose a tax upon such bonds held by ordinary corporations.
>
> "It is also suggested in that connection that the amendment in question is necessary, and that its real object was to avoid discrimination forbidden by federal statutes against national banks. But it is enough to say that if such discrimination would otherwise result it must be avoided by some method which does not involve the imposition of a tax which uniformly

for a century has been condemned by this Court as unconstitutional. The state may not save itself from infringing an Act of Congress by violating the Constitution."

It will be noted that in this case the Court did not pass on the validity of the assessment as against national banks. The national banks were not before the Court contesting the tax. The Court there simply held that even though the assessment against national banks was valid, that the State, under the peculiar circumstances of the taxing policy of the State, could not by its amendment include in the measure of the tax as against other corporations, for the privilege of doing business in that State, interest derived from such bonds.

After the decision in the above case, Massachusetts amended its tax Act as against other corporations in order to make the rate against such corporations correspond to the rate assessed against national banks. But notwithstanding such opinion, the State of Massachusetts did not change its mode of assessment against national banks, but did then, and does now, assess such banks in accordance with Method No. 4 authorized by Congress, and does assess said banks on their entire net income derived from all sources, including interest derived from the governmental securities.

This case, however, can no longer be considered as a controlling authority, as its affect was practically destroyed, if not entirely overruled in the later case of *Pacific Company* v. *Johnson*, 285 U. S. 480. This case has

heretofore been cited in this brief, but we here call the Court's attention to that portion of the opinion which we contend clearly distinguishes it from the *Macallen* case, *supra*.

The Court, in discussing a California statute similar to the Massachusetts statute, in the Macallen case, at page 494, says:

> "But it is said that the ruling of this Court in *Macallen Co.* v. *Massachusetts, supra*, requires the condemnation of the present tax. There the Commonwealth, which had long imposed a tax on corporate franchises measured by taxable income of the corporation, amended its statutes so as to add the income from tax-exempt bonds of the federal government to the measure of the tax. It was held that this change of taxation policy, embodied in the statute and 'adopted as though it had been so declared in precise words for the very purpose of subjecting these securities *pro tanto* to the burden of the tax,' was invalid. Thus the legislative abandonment of a policy which had previously discriminated in favor of tax-exempt securities was treated as a discrimination against them, and the tax, although in fact non-discriminatory, was condemned as analogous to the discriminatory tax held invalid in the Miller case. See *Macallen Co.* v. *Massachusetts, supra*, pp. 630, 631.
>
> "But the State of California, in its legislation, has indulged in no reversal of policy so far as the measurement of the franchise tax is concerned and in no discrimination either in favor of or against tax-exempt income. The entire history of its legislation discloses only that it has sought, in good faith, to conform its scheme of taxation of corporations to a permitted

method of taxing national banks, to avoid discrimination against the latter. It has effected its purpose by adopting, in a single legislative act, a new form of privilege tax on corporations measured by their net income without any form of discrimination as to the sources of the income included in the measure differing in this respect in no material way from the similar tax upheld in *Flint* v. *Stone Tracy Co.*, and in *Educational Films Corp.* v. *Ward, supra.* We should hesitate to say that any action of the legislature or any purpose disclosed by a state commission could restrict the power of the state by constitutional amendment to authorize a tax which admittedly it could have authorized without them. In any case, the use of words in the statute and report, indicating what would otherwise have been implied, that 'income' includes income from tax-exempt bonds, could neither enlarge the exemption nor diminish the constitutional power of the state.

"But we do not rest our decision upon any narrow distinction as to the precise form of words which may be employed in taxing statutes or the particular order in which its provisions are incorporated in the statute, whether by a single legislative act or by amendment or the addition of new provisions in successive re-enactments. A taxing statute, like others, must be read as a whole, as it stands on the statute books at its applicable date, and the legislative purpose in enacting it must be taken, regardless of forms of words, to envisage the obvious consequences which flow from its operation. Since the mere intent of the legislature to do that which the Constitution permits cannot deprive legislation of its constitutional validity, and the purposeful choice by the state of a method of taxation which appellant's contract allows, cannot alter the terms of the contract the present act must be judged by its

operation rather than by the motives which inspired it. As it operates to measure the tax on the corporate franchise by the entire net income of the corporation, without any discrimination between income which is exempt and that which is not, there is no infringement of any constitutional immunity."

It will also be noted that in this case, the Court did not pass upon the validity of the assessment of national banks under the California Act. California also adopted Method No. 4 of assessing national banks. While, as stated, the Supreme Court did not pass upon the validity of such assessment, as applied to national banks, we submit that no one can read the opinion in that case without arriving at the conclusion that if the assessment against national banks had there been challenged, the Court would have sustained the tax, just as it did sustain the right of the State of California in assessing a privilege tax against other corporations to include in the measure of the tax interest derived from governmental securities.

The Johnson case was followed by this Court in a *per curiam* opinion in the case of *People* v. *Lynch*, 290 U. S. 601.

The State of Oklahoma is in the same position that California was at the time it adopted its act assessing national banks in accordance with Method No. 4. Oklahoma did not change its policy of taxing other corporations. Oklahoma has always, and does now tax other corporations, for the privilege of doing business in the State, an excise tax which includes in the measure of the tax govern-

mental instrumentalities. (See Stipulation, Tr. 26.) Oklahoma simply did as California did—amended its tax Act, electing Method No. 4 under which to tax national banks. This method was authorized by Congress under the 1926 Amendment, and it certainly cannot be said, simply because the State elected to tax banks by that method, that its act, because of such election, is unconstitutional. If this contention of counsel is correct, then no state, which once elected to tax national banks under any other method except Method No. 4, could ever thereafter change to Method No. 4. Such contention is wholly untenable. Nothing that is said by the Supreme Court in the *Macallen* case, *supra* (even though that case may still be considered as authority for any purpose) can be construed as tending to so hold. We scarcely believe that such contention will be given serious consideration by this Court.

The case of *Miller* v. *Milwaukee*, 272 U. S. 713, is also cited. That case, however, was distinguished by this Court in the *Johnson* case, *supra*, wherein it was said:

> "The view that a tax, although levied on a taxable subject, may be deemed invalid because purposely devised to include a non-taxable subject in its measure, receives only a limited and qualified support from *Miller* v. *Milwaukee, supra*. There a state statute taxing corporate dividends was framed in such manner as to tax them only so far as they were derived from corporate income from tax-exempt bonds of the United States. The taxing act thus, on its face, did more than exhibit an intention of the one sovereignty to include in the dividends taxed, those derived from income from a non-taxable instrumentality of the other, together with income from all other sources. That admittedly would have been permissible; see *Des Moines National Bank* v.

Fairweather, supra; Flint v. *Stone Tracy Co., supra; Educational Films Corp.* v. *Ward, supra.* But it was the exclusion from the measure of the tax of all income except from federal bonds which rendered the tax invalid.

* * * * * * * * *

"But the present case is not one of discrimination. There is no attempt, as in *Miller* v. *Milwaukee, supra,* to measure the tax by exempt income while excluding from the measure all taxable income. The state seeks to do only what its contract permits it to do, to measure the franchise tax by all the net income of the taxpayer. If the words 'net income' in the taxing statute may rightly be taken to include income from tax-exempt bonds, as they were in *Flint* v. *Stone Tracy Co., supra,* then there can be no tenable ground for saying that the addition of the words 'income * * * includes * * * all interest received from federal, state, municipal or other bonds,' discloses any different purpose on the part of the Legislature, or can have any different effect, or can more definitely infringe the exemption than did the tax upheld in *Flint* v. *Stone Tracy Co., supra;* or that in *Educational Films Corp.* v. *Ward, supra.*"

We submit that the above authorities do not sustain counsel's contention.

The acts under which the bonds were issued do not prohibit the assessment of the tax here involved. The act levying the tax does not, therefore, impair the obligation of appellant's contract.

Counsel urge that the Acts of Congress under which the various bonds herein involved were issued exempt them from taxation, and that the tax here laid is in violation of such provisions and, therefore, impairs the obligation of appellant's contract.

In support of this contention counsel cite the case of *District of Columbia* v. *Briggs National Bank*, 30 Fed. (2d) 873. In that case the District of Columbia, by the Act of 1902, as amended by the Act of 1917, taxed national banks on a certain per cent of their gross receipts, and included in the measure of such tax interest derived from government bonds. Under a later Act other bonds were issued, and that Act provided that such bonds should be exempted from all taxation, except estate or inheritance taxes imposed by authority of the United States or its possessions, or by any State or local taxing authority. The District sought to tax these bonds under the provisions of said Act of 1902, as amended in 1917. The Court held the latter Act superseded that Act, and that the District of Columbia could not, in assessing national banks, include in the measure of the tax gross income derived from such bonds.

The gist of the above statute is stated in the opinion as follows:

"Paragraph 5 of the Act of Congress of July 1, 1902, 32. Stat. 619, provides in brief that each national bank in the District shall on or before August 1st of each year make return to the board of personal tax appraisers of the amount of its gross earnings for the preceding year ending the 30th day of June, and shall pay to the collector of taxes 6 per cent per annum on such gross earnings. It also provides that in addition thereto the real estate owned by each national bank shall be taxed as other real estate in the District of Columbia. By an amendment of 1917 (39 Stat. 1047) it was provided that the tax levied on gross earnings should be in lieu of all other taxation upon the personal property of the bank."

It will be noted that the statute in that case omits the all-important words contained in Section 5219, authorizing assessments against national banks, that such banks may be assessed under Method No. 4 on their entire net income derived from all sources. The words "entire income from all sources" are excluded from the 1902 Act under which national banks in the District of Columbia were assessed.

We have always conceded, and now concede, that prior to the 1926 Amendment authorizing the states to include in the measure of the tax, when electing to tax under Method No. 4, the entire net income derived from all sources, that the State was without power to in any manner reach, in assessment against national banks, income derived from Governmental securities, but as before stated, the Amendment was expressly adopted for the purpose of permitting the State to include in the measure of the tax

such income. Moreover, the Act in the above case authorized the assessment on gross earnings. It has always been held by the Supreme Court and other courts that in assessing taxes for the privilege of doing business in a state, a state, measuring the tax by net income, might include in the measure thereof net income derived from Governmental securities, but that it could not include in the measure of such tax gross income. This distinction is clearly pointed out in the case of *Northwestern Mutual Life Insurance Co.* v. *Wisconsin*, 275 U. S. 136, 72 L. ed. 202, cited in the above opinion. In that case the Court, after holding that the tax in that case was not strictly a privilege tax, further said, in 72 L. ed. 206:

> "Section 76.34 undertakes to impose a charge not measured by dividends paid, as in *Home Ins. Co.* v. *New York, supra*, nor by net income as in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct Rep. 342, Ann. Cas. 1912B, 1312; and those cases are not controlling. The distinction between an imposition, the amount of which depends upon dividends or net receipts, and one measured by gross returns is clear. *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321, 328, 62 L. ed. 1135, 1141, 38 Sup. Ct. Rep. 499, Ann. Cas. 1918E, 148, and earlier opinions there cited."

Reverting to the opinion of the Court in the *Briggs National Bank* case, *supra*, we call the Court's attention to the following language used in disposing of the issues there involved:

> "The controlling point in the decision of the court in this case is that a *license, franchise, or privilege tax, measured by gross income, gross earnings, or gross*

*receipts, which are partly derived from United States bonds, amounts to taxation on the bonds themselves and it was for this reason that the court held that the state exceeded its power and that the tax was to that extent void. The District tax law is not different from the law of Wisconsin, as set out in the opinion of the court in the second Wisconsin case. * * *"*

It will be observed that in that case the tax was assessed upon the gross earnings of the bank. It was contended in that case that the gross earnings tax was a tax assessed for the privilege of doing business within the District, and that the inclusion of such gross earnings in the measure of the tax did not operate to assess a direct tax against the bonds. The Court denied that contention, but based its denial mainly upon the proposition that the tax was levied upon gross receipts and not upon net income. It is there again pointed out that it has always been held that a tax, even though called a privilege tax, measured by gross receipts was, and amounted to, a direct tax upon a governmental instrumentality and, in effect, a property tax, and therefore could not be considered a tax for the privilege of doing business.

It must be borne in mind in this case that the State is not here seeking to levy a tax upon gross receipts or gross earnings derived from governmental securities, nor is it seeking to levy a property tax directly against the bonds, nor to levy a direct income tax against the interest derived from such bonds, nor a tax against its franchise, but is simply seeking to assess a tax against national banks for the privilege of doing business within this State and

measuring such tax by the net income derived from all sources, as it is authorized to do by Congress.

The Court simply held in this case that, since, gross earnings and not net income constituted the measure of the tax, the Act did not operate to assess a privilege tax against the bank, but operated to assess a direct property tax against its bonds, and that the interest derived from the bonds involved in that action could not be taxed because exempted by the Act under which the bonds were issued.

This case does not in any manner sustain the contention of appellant, but rather leads to the contrary conclusion. The inference is, that if the Act had provided that national banks situated in the District of Columbia might be assessed a tax, measured by net income including income derived from Government bonds, the Court would have construed the tax as a privilege tax and permitted the inclusion of the interest derived from these bonds to be considered in the measure thereof.

The appellant in the instant case is certainly in no better position, in relation to the bonds here involved, than any other corporation which might have possession of such bonds, or any portion thereof. It certainly would not be contended that in assessing a privilege tax against such corporation that the State could not include in the measure of the tax capital invested by such corporation in such bonds. This being true, the same rule is applicable in assessing a privilege tax against national banks.

There is attached to the stipulation "Exhibit-D" (Tr. 39), which contains a schedule of the kind and character of bonds involved in this action. They consist of:

Federal Farm Mortgage Corporation Bonds,
U. S. Treasury Notes,
U. S. Treasury Bonds,
Joint Stock Land Bank Bonds,
Home Owners' Loan Corporation Bonds,
Federal Land Bank Bonds.

The Federal Land Bank Bonds and Joint Stock Land Bank Bonds were issued under the provisions of the Act of July 17, 1916, as amended, 39 Stat. at Large 380.

The Section insofar as exemption from taxation is concerned will be found in Volume 4, Fed. Code, Title 12, Sec. 931 (39 Stat. at Large 380). This Section provides:

> "Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempted from Federal, State, municipal, and local taxation, except taxation upon real estate held, purchased, or taken by said bank or association under the provisions of section 11 and section 13 of this Act. First mortgages executed to Federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income therefrom shall be exempt from Federal, State, municipal, and local taxation."

The exemption as to Federal Farm Corporation Bonds will be found in Title 12, Fed. Code 1020f, subdivision (b) (48 Stat. at Large 360), and is as follows:

"Mortgages executed to the Land Bank Commissioner and mortgages held by the corporation, and the credit instruments secured thereby, and bonds issued by the corporation under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation (except surtaxes, estate, inheritance and gift taxes)."

The Act under which the Home Owners' Loan Corporation Bonds were issued contains somewhat similar exemptions, and will be found in 4 Fed. Code, Title 12, Sec. 1463e (49 Stat. at Large 296). The Acts authorizing the issuance of the U. S. Treasury Notes and U. S. Treasury Bonds contain like exemptions. It is our contention that the tax-exemption provisions of these various Acts are not broad enough to preclude the State from assessing a privilege tax against national banks, for the privilege of doing business, and including in the measure thereof interest derived from such bonds, as the assessment is specifically authorized by special Act of Congress. The Acts authorizing the issuance of these bonds certainly do not repeal Section 5219, U. S. Revised Statutes, as amended.

As before stated, neither the bonds nor the interest derived therefrom are taxed, and no assessment against the bonds or the interest has been made by the Tax Commission. The Commission has simply assessed a privilege tax against the bank for the privilege of doing business in this State.

This theory and contention, we think, are clearly sustained by the Supreme Court of the United States in the case of *Pacific Co., Ltd.*, v. *Johnson*, 285 U. S. 480. It is there said:

> "A California corporation acquired municipal bonds at a time when, by the state constitution, they were declared to be 'free and exempt from taxation.' Subsequently, pursuant to a change in the constitution, a statute subjected the corporation to a tax on the privilege of doing business in the State, measured by a specified percentage of its net income, in the computation of which the statute directed the inclusion of 'all interest received from federal, state, municipal or other bonds.' *Held* (assuming that the exemption was contractual and extended to the income derived from the bonds exempted):
>
> "1. That the tax immunity granted was not broad enough to secure freedom from taxation of the corporate franchise measured by the tax-exempt income, and therefore, the obligation of the bond contracts was not impaired by the tax."

The tax herein laid is not within the scope of the exemptions granted by the various Acts under which these bonds were issued. This contention, we think, is further sustained by the case of *Hale* v. *State Board of Assessment and Review*, 302 U. S. 95. The gist of the decision in that case is stated in paragraphs 2 and 5 of the headnotes, as follows:

> "Iowa legislation, in effect when state and municipal bonds were issued and acquired, declared that such bonds should not be taxed. Later, a tax on the net income of residents in the State was imposed for the

first time, and income taxes were assessed to the bondholders, the interest derived from their bonds being included in the computation of net income. The state court assumed without deciding that the statutes of exemption should be treated as giving rise to contracts, but interpreted those statutes as limited to taxes laid directly upon property in proportion to its value, and not as touching taxes in the nature of an excise upon the net income of the owner. This Court follows the state court's conclusion, finding that at the least it is not plainly wrong and that it has support (a) in the State's statutory system of taxation viewed in its entirety (p. 101), (b) in decisions of Iowa and other States before the bonds were bought and afterwards (p. 103), and (c) in decisions of this Court, p. 104.

* * * * * * * * *

"The tax complained of in this case is not laid upon the obligation to pay the principal or the interest, at all events not within the meaning of the contract of exemption; but is laid upon the yield, if any, of an aggregate of occupations and investments. P. 107. 271 N. W. 168, affirmed."

In that case the State of Iowa sought to levy an income tax on interest derived from State and municipal bonds. At the time these bonds were issued, under the statute of that State, they were expressly exempted from taxation. Thereafter the State of Iowa passed its Income Tax Act and specifically provided that the interest from state and municipal bonds should be subject to the tax. The taxpayer contended that such Act impaired the obligation of its contract. The Supreme Court of Iowa denied that contention and on appeal this Court affirmed the

judgment and held that the tax assessed under the Income Tax Act was not within the scope of the original exemption granted.

To the same effect is the case of *Flint* v. *Stone Tracy Co.*, 220 U. S. 108. In discussing a question similar to the one here involved, beginning at page 164, the Court said:

> "In *Home Ins. Co.* v. *New York*, 134 U. S. 594, a tax was sustained upon the right or privilege of the Home Insurance Company to be a corporation, and to do business within the State in a corporate capacity, the tax being measured by the extent of the dividends of the corporation in the current year upon the capital stock. Although a very large amount, nearly two of three millions of capital stock was invested in bonds of the United States, *expressly exempted from taxation by a statute of the United States*, the tax was sustained as a mode of measurement of a privilege tax which it was within the lawful authority of the State to impose. Mr. Justice Field, who delivered the opinion of the court, reviewed the previous cases in this court, holding that the State could not tax or burden the operation of the Constitution and of laws enacted by the Congress to carry into execution the powers vested in the General Government. Yielding full assent to those cases, Mr. Justice Field said of the tax then under consideration: 'It is not a tax in terms upon the capital stock of the company, *nor upon any bonds of the United States composing a part of that stock.* The statute designates it a tax upon the "corporate franchise or business" of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year.' In that case, in the course of the opinion, previous cases of

this court were cited, with approval, *Society for Savings* v. *Coite*, 6 Wall. 594; *Provident Institution* v. *Massachusetts*, 6 Wall. 611.

"In the Coite case a privilege tax upon the total amount of deposits in a savings bank was sustained, although $500,000 of the deposits had been invested in securities of the United States, *and declared by the act of Congress to be exempt from taxation by state authority*. In that case the court said: 'Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the state government. Authority to that effect resides in the State independently of the Federal Government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in Federal securities.' In *Provident Institution* v. *Massachusetts*, *supra*, a like tax was sustained.

"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation *from all sources*, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed. See in this connection *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S. 217, as interpreted in *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Texas*, 210 U. S. 217, 226."

The Supreme Court of this State, in the case of *First National Bank of El Reno* v. *Oklahoma Tax Commission*, 185 Okla. 98, 90 Pac. (2d) 438, in construing the section of the Act here involved, construed the same as levying a franchise tax for the purpose of doing business in the State, measured by net income, just as have the taxing Acts involved in the above cases been construed by this Court. It is there said:

> "The statute herein involved (sec. 16, art. 6, chap. 66, S. L. 1935) was enacted pursuant to specific authority granted by Congress which authorized the levy of a tax 'according to or measured by the entire net income (received) from all sources.' It was, no doubt, contemplated that income derived from tax-exempt securities would be included.
>
> "The power of the state to levy a franchise tax measured by net property or income, including tax-exempt bonds of the United States, or their income, has been upheld by the Supreme Court of the United States in a long line of decisions. The state act and the permissive federal act involved herein clearly indicate that such a tax was contemplated and levied; therefore, under the authorities, no state or federal constitutional provision has been contravened by this taxing statute."

What is said by this Court in the above cases applies with equal force to the case at bar. The immunity granted by the Acts in question is not broad enough to secure freedom from taxation of the privilege tax assessed against appellant, measured by the tax-exempt income, and, therefore, such income is properly and legally and constitutionally included in the measure of the tax.

Counsel, in order to sustain their contention relative to the proposition here discussed, also rely on *Macallen* v. *Massachusetts, supra.* That case, however is not applicable to the facts in this case. In that case the State of Massachusetts enacted a statute levying a license tax against corporations for the privilege of doing business within the State, measured by net income. The Act expressly provided for an exemption of income derived from State, municipal and governmental securities. Thereafter the State amended its Act and expressly provided that in measuring the tax, interest derived from such securities should be included in the measure of the tax. This Court held that the Act did not apply to income derived from securities issued prior to the amendment; that the inclusion of such interest in the measure of the tax impaired the obligation of the contract as to such securities.

This case is not at all applicable here. At the time the securities in question were issued, there was no Act of the State expressly prohibiting the State, in assessing a franchise or privilege tax, from including therein income derived from such securities. Moreover, this case is clearly distinguished by this Court in the *Johnson* case, *supra*, and what is said in the Johnson case applies here.

The cases relied upon by counsel are, therefore, not controlling.

Counsel further contend that the Act assesses an income tax on income derived from the bonds in question, and that such tax is prohibited by the Acts under which

the bonds were issued. In this connection they call attention to the fact that the Supreme Court of the State, in construing a prior tax Act, held that the tax assessed against national banks thereunder was an income tax.

The case of *Board of County Commissioners of Oklahoma County* v. *State Board of Equalization*, 155 Okla. 183, 8 Pac. (2d) 732, is cited. It is there said:

> "Under article 7, chap. 66, Sess. Laws 1931, banks and banking corporations are classified for the purpose of taxation, and a tax laid on the net income of said banks."

It will be noted in that case that the Court was construing the Act of 1931, under which the State elected to assess national banks in accordance with Method No. 3, which authorized the states to assess national banks on their net income. Under that Act the Court correctly held that the tax assessed was an income tax. However, the law was revised in 1935, and under that Act the State elected to assess national banks in accordance with Method No. 4, authorized by Congress, that is, according to or measured by net income.

The Supreme Court, in construing the Act, specifically held in the case of *First National Bank of El Reno* v. *Oklahoma Tax Commission*, *supra*, that the tax assessed thereunder was a franchise tax measured by net income. The decision in the instant case was based on that case. It will, therefore, be seen that there is no decision of the Supreme Court of the State holding that the present tax,

and the tax here involved, against national banks is an income tax.

We submit that the authorities amply sustain the Supreme Court in its conclusions as to the nature of the tax. We further submit that the tax laid is in all respects valid and that the judgment of the Supreme Court of the State so holding is correct and should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 596.—October Term, 1939.

Tradesmens National Bank of Oklahoma City, a Banking Corporation, Appellant, vs. The Oklahoma Tax Commission.	Appeal from the Supreme Court of the State of Oklahoma.

[March 25, 1940.]

Mr. Justice Murphy delivered the opinion of the Court.

This is an appeal under § 237 of the Judicial Code from a judgment of the Supreme Court of Oklahoma, denying recovery of taxes alleged to have been exacted from appellant, a national banking corporation, in violation of the provisions of R. S. 5219 and the Constitution of the United States.

Section 16 of the Oklahoma Income Tax Law of 1935 [S. L. 1935, c. 66, art. 6][1] lays a tax upon every national banking association, located or doing business within the state "according to, or measured by, its net income" at the rate of six per centum. Section 17 provides for a similar tax upon state banks and Morris Plan Companies.

The net income used as the measure of the tax under §§ 16 and 17 is determined by subtracting from gross income, as defined in § 18, certain deductions allowed by § 9. Section 18 defines gross

[1] The text of Section 16 reads as follows:

(a) In lieu of the tax imposed by Section 6, every national banking association located or doing business within the limits of the State of Oklahoma, shall annually, pay to this State, a tax according to, or measured by, its net income, to be computed in the manner hereinafter provided, at the following rates upon the basis of its entire net income for the next preceding fiscal or calendar year:

Six (6%) per centum of the amount of the net income as herein provided.

(b) The State of Oklahoma is hereby adopting method numbered (4), authorized by Section 5219, U. S. Revised Statutes, as amended. The tax imposed by this Section shall be exclusive and in lieu of all taxes imposed by the State of Oklahoma, or any subdivision thereof, on the property of any association liable to tax hereunder; provided, that nothing in this Section shall be construed to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed.

income for the purposes of "national banking associations, state banks, trust companies and other financial corporations" [§ 8(c)]. It specifically includes in gross income "interest upon the obligations of the United States, or its possessions, or upon securities issued under the authority of an Act of Congress the income from which is tax free."

All other types of corporations are taxed at the flat rate of six per centum upon the net income allocable to business transacted within the state [§6]. Net income for this purpose is determined by making certain specified deductions from gross income [§§ 7, 9], which is defined expressly so as to exclude interest on tax-immune federal securities [§ 8(b)(4)].

The appellee Oklahoma Tax Commission, in assessing appellant's tax for the year 1936 under § 16, included in gross income the dividends received by appellant on stock owned by it in a federal reserve bank and the interest received on bonds and notes issued pursuant to acts of Congress declaring the income from such securities tax exempt.[2] The present suit was brought by appellant to recover that portion of the tax, paid under protest, which resulted from including such dividends and interest in the computation.

R. S. 5219, 12 U. S. C. § 548, copied in the margin,[3] authorizes four alternative methods whereby a state may impose a tax on

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[2] The stipulation of facts shows that the interest used in the computation of the tax was derived from the following types of securities: U. S. Treasury Notes; U. S. Treasury Bonds; Bonds of the Federal Farm Loan Act; Joint Stock Land Bank Bonds; Home Owners' Loan Corporation Bonds; and Federal Land Bank Bonds.

[3] The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

. . . . . .

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits:

. . . . . .

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

national banking associations located within its limits. Method numbered (4) provides for a tax on such associations "according to, or measured by" "the entire net income received from all sources" subject only to certain restrictions as to the rate. This method was added to the three previously authorized under R. S. 5219 by an amendment of March 25, 1926 [c. 88, 44 Stat. 228]. The plain meaning of the amendment is confirmed by its legislative history showing beyond doubt that Congress intended to authorize a franchise tax measured by net income including interest on tax-immune federal securities.[4]

Oklahoma in the 1935 act expressly followed and adopted the method thus authorized in the amendment. See *First National Bank* v. *Oklahoma Tax Commission*, 185 Okla. 98, 90 P. (2nd) 438. Subsection (b) of § 16 expressly declares that the state thereby adopts method numbered (4) authorized by R. S. 5219, 12 U. S. C. § 548.

The power of Congress to authorize a state to impose a tax on the franchise of a national banking association can not now be doubted. *Van Allen* v. *Assessors*, 3 Wall. 573. Compare *Keifer & Keifer* v. *R.F.C.*, 306 U. S. 381, 389; *Helvering* v. *Gerhardt*, 304 U. S. 405, 411-412n; *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 234-235. Any immunity attaching to the franchise by virtue of R. S. 5219 as it read prior to the 1926 amendment, compare *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21, could be withdrawn by Congress and the franchise subjected to state taxing power, just as national bank shares were so subjected by the Act of June 3, 1864. *Van Allen* v. *Assessors*, 3 Wall. 573. See *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103; *Peoples National Bank* v. *Board of Equalization*, 260 U. S. 702.

The power of a state to levy a tax on a legitimate subject, such as a franchise, measured by net assets or net income including tax-exempt federal instrumentalities or their income is likewise well settled. *Society for Savings* v. *Coite*, 6 Wall. 594; *Provident Institution* v. *Massachusetts*, 6 Wall. 611; *Home Insurance Company* v. *New York*; 134 U. S. 594; *Educational Films Corp.* v. *Ward*, 282 U. S. 379. Thus state laws taxing the shareholders of national

[4] 67 Cong. Rec. 5760-5762, 5822-5823, 6082-6089.

banks in accordance with R. S. 5219 on the full net value of their shares, although the banks owned tax-exempt federal securities, have been consistently upheld. *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103; *Peoples National Bank* v. *Board of Equalization*, 260 U. S. 702; *Van Allen* v. *Assessors*, 3 Wall. 573. The rule that a tax upon a legitimate subject, measured by net income, including that from tax-immune federal instrumentalities, is not an infringement of the immunity, was affirmed in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 147, 165, and followed in *Educational Films Corp.* v. *Ward*, 282 U. S. 379. Compare *Pacific Co.* v. *Johnson*, 285 U. S. 490. The tax-immunity conferred on the securities owned by appellant has not been shown to be any greater in extent than that conferred on the federal securities included in the measure of the taxes sustained in the cited cases.

Sections 16 and 17 of the 1933 act were for present purposes identical with the corresponding sections of the 1935 act, but § 18 of the prior act contained a provision expressly excluding from gross income the interest on tax-immune federal securities.

Appellant contends that the act of 1935, by expressly including in the measure of the tax the interest on federal securities which before had been expressly excluded from the measure, must be regarded not as a valid franchise tax but as an unconstitutional levy on the tax-immune income itself. In support of its position, its main reliance is placed upon our decision in *Macallen* v. *Massachusetts*, 279 U. S. 620.

A similar contention was urged against the California franchise tax measured by net income, including tax-exempt income on state bonds, which was upheld in *Pacific Co.* v. *Johnson*, 285 U. S. 480. In rejecting the claim, the holding in the *Macallen* case was referred to as follows (285 U. S. at 494): "There the Commonwealth, which had long imposed a tax on corporate franchises measured by taxable income of the corporation, amended its statutes so as to add the income from tax-exempt bonds of the federal government to the measure of the tax. It was held that this change of taxation policy, embodied in the statute and 'adopted as though it had been so declared in precise words for the very purpose of subjecting these securities *pro tanto* to the burden of the tax,' was invalid. Thus the legislative abandonment of a policy which had

previously discriminated in favor of tax-exempt securities was treated as a discrimination against them, and the tax, although in fact non-discriminatory, was condemned as analogous to the discriminatory tax held invalid in the *Miller* case [*Miller* v. *Milwaukee*, 272 U. S. 713]." See also *Educational Films Corp.* v. *Ward*, 282 U. S. 379, 392-393.

It cannot be said that the Oklahoma tax in question here was aimed at tax-exempt federal securities in the manner thus disclosed and condemned in the *Macallen* case. The history of the Oklahoma legislation on this subject discloses only that it sought to change its policy pursuant to the express authorization conferred by R. S. 5219. It has effected its purpose by including within the measure of its franchise tax on national banks the entire net income without respect to source and without discrimination against tax-exempt federal securities. See *First National Bank* v. *Oklahoma Tax Commission*, 185 Okla. 98, 90 P. (2nd) 438.

We do not now decide just what circumstances, if any, would bring a situation within the precise scope of the *Macallen* case, assuming that case still has vitality. It is sufficient to hold, as we do, that the statute in the instant case merits the test stated in *Pacific Co.* v. *Johnson*, viz: "Since the mere intent of the legislature to do that which the Constitution permits cannot deprive legislation of its constitutional validity, . . . the present act must be judged by its operation rather than by the motives which inspired it. As it operates to measure the tax on the corporate franchise by the entire net income of the corporation, without any discrimination between income which is exempt and that which is not, there is no infringement of any constitutional immunity."

Appellant finally contends that the tax here in question violates the restriction in R. S. 5219 that "the rate shall not be higher than . . . the highest of the rates . . . assessed upon mercantile, manufacturing, and business corporations doing business" within the state.[5]

A consideration of the course of judicial decision on R. S. 5219 and its predecessors can leave no doubt that the various restrictions

[5] No claim is made that state financial institutions receive more favorable treatment than national banking associations. Sections 17, 18 and 8(c) show that the tax imposed on such state institutions is the equivalent of the tax levied by § 16 on national banks.

it places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank* v. *Hartford*, 273 U. S. 548; *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 375; *Covington* v. *First National Bank*, 198 U. S. 100; *Lionberger* v. *Rouse*, 9 Wall. 468. Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 375; *Covington* v. *First National Bank*, 198 U. S. 100.[6] We think the same purpose to prevent actual discrimination but to allow the states considerable freedom in working out an equitable tax system is discernable in the particular restriction upon which appellant relies.

The resolution of the issue raised by appellant thus turns upon an examination of the whole tax structure of the state. Counsel have stipulated that six thousand business and mercantile corporations, in addition to paying the income tax imposed by § 6 on six per centum of their net income, filed a corporation license tax return for the year 1936 and paid a tax based on one dollar per one thousand dollars of the value of the capital stock employed within the state, and that the Government bonds held by each were included as capital in the measure of the franchise tax. They further stipulated that only thirty-seven of these six thousand corporations owned Government bonds and that, in the case of all but three, the franchise taxes paid exceeded the additional amounts which would have been due under the income tax imposed by § 6 had their gross income, contrary to the fact, included the interest derived from the bonds. In addition to the foregoing taxes, so it is stipulated, each of these corporations paid an ad valorem tax on its moneyed capital.

This brief survey suffices to show that, considering all the taxes imposed upon business and mercantile corporations doing business

[6] See also Davenport Bank v. Davenport Board of Equalization, 123 U. S. 83; Mercantile Bank v. New York, 121 U. S. 138; Des Moines v. Fairweather, 263 U. S. 103.

in the state, the scheme of taxation adopted by Oklahoma does not discriminate against national banking associations. Discrimination is not shown merely because a few individual corporations, out of a class of several thousand which ordinarily bear the same or a heavier tax burden, may sustain a lighter tax than that imposed on national banking associations. Compare *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 373, at 393; *Lionberger* v. *Rouse*, 9 Wall. 468. Judged in the light of the established policy of Congress with respect to this subject, the 1935 Oklahoma taxing statute cannot be held to violate the provisions of R. S. 5219.

The other contentions advanced by appellant have been considered and found to be without substance.

Affirmed.

Mr. Justice McREYNOLDS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.